

**BEFORE THE
DEPARTMENT OF TRANSPORTATION
WASHINGTON, D.C.**

Petition of

Doupe Services LLC d/b/a/ Curtis Air
Taxi and Jobs Lane Aviation, LLC

for a Declaratory Judgment

Docket No. DOT-OST-2022-0043

**REPLY OF DOUPE SERVICES LLC D/B/A CURTIS AIR TAXI AND JOBS LANE
AVIATION, LLC IN FURTHER SUPPORT OF THEIR PETITION FOR AN
EMERGENCY DECLARATORY ORDER REGARDING EAST HAMPTON AIRPORT**

Communications with respect to this document should be sent to:

Jol A. Silversmith
Barbara M. Marrin
KMA Zuckert LLC
888 Seventeenth Street, NW, Suite 700
Washington, D.C. 20006
Tel: (202) 298-8660
Fax: (202) 342-0683
jsilversmith@kmazuckert.com
bmarrin@kmazuckert.com

May 6, 2022

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Doupe Services, LLC d/b/a Curtis Air Taxi and Jobs Lane Aviation, LLC (“Petitioners”) respectfully submit this Reply in further support of their Petition for the institution of a proceeding and the entry of a declaratory order, on an emergency basis. The question raised by the Petition is simple: Can an airport sponsor unilaterally declare that it is exempt from statutes enforced by the Department of Transportation (“DOT”) because it has closed the airport for 33 hours and changed the airport’s name? The answer is an emphatic “no.” As explained more fully herein, nothing in the April 27, 2022 Response of the Town of East Hampton (“the Town”) should alter that conclusion.¹

Therefore, it is appropriate that DOT issue an expedited order finding that the East Hampton Airport (“HTO”), as owned and operated by the Town, is and will continue to be: (1) subject to the provisions of the Airport Noise and Capacity Act of 1990 (49 U.S.C. § 47521, et seq.) (“ANCA”), and that any noise or access restrictions imposed by the Town on the airport must conform to the requirements of ANCA and its implementing

¹ To the extent necessary, Petitioners move DOT for leave to submit this Reply pursuant to 14 C.F.R. § 302.6. There is good cause for Petitioners to address misstatements of fact and law in the Town’s Response and to ensure that there is a complete and accurate record for DOT’s consideration.

regulations (14 C.F.R. Part 161); and also (2) subject to the preemption provisions of the Airline Deregulation Act of 1978 (49 U.S.C. § 41713(b)) (“ADA”), which further limit the Town’s ability to restrict commercial operations at its airport.

The Town, in its Response, essentially asserts that it should face no consequences for its plan—already in motion, and to be implemented in full in less than two weeks—to impose access restrictions at HTO that facially violate federal law. At its core, the Town’s claim is that it can engage in a shell game of closing HTO and re-opening it as a “new” airport, and thus—somehow—escape the deliberately expansive requirements of ANCA and the ADA. Neither DOT nor the law should be so easily deceived. DOT should decline the Town’s invitation that the agency stand back and allow this sham to continue—which would not just cause harm to HTO tenants and users but also set a dangerous precedent for the integrity of the national system of airports. The ruling requested in the Petition is thus of both local and national importance, as well as within DOT’s jurisdiction.

In further support of their Petition, Petitioners respectfully state as follows:

- **East Hampton cannot simply declare HTO to be a new, private-use airport.**

The central premise of the Response is that because the so-called “new” airport will be designated as “private-use,” the Town will be enabled to impose, at its whim, restrictions on operations at the airport. See, e.g., Response, at 1. But even assuming for present purposes the predicate that ANCA does not apply to private-use airports, there is a significant omission in the Town’s reasoning—*i.e.*, on what basis can the Town declare HTO to be “private-use”? The answer is that there is none. HTO is a publicly-owned airport. The Town proposes to close the airport for 33 hours starting on May 17, and to make minor/ministerial changes to the facility (such as acquiring ownership of

navigational aids from FAA and slightly modifying the airport's name). However, it will remain the same publicly-owned facility, with virtually the same infrastructure. Indeed, as previously noted, the Town does not even genuinely believe that the "new" airport will be a different entity from HTO; *i.e.*, airport tenants have been informed that no changes to their contracts are required. See, *e.g.*, Exhibit 14. Likewise, FAA previously asked the Town to "share the details of its legal theory" about how the closure and nominal opening of a "new" airport would extinguish existing legal obligations. See Exhibit 13. The Town declined to explain its theory—presumably because it does not actually have one.

- **The Town has presented DOT with a strawman regarding private-use airports.**

The Town asserts that this proceeding would have implications for 14,400 private-use airports throughout the country. See Response, at 2. But that is simply not an accurate representation of what is at stake. The Petition would *directly* affect one airport, *i.e.*, HTO, which the Town's outside counsel appears to have acknowledged is the only publicly-owned airport that a sponsor has attempted to transform from a public-use into a private-use facility, describing its plan as a "first-of-its-kind process." See Response, at 10-11.² Moreover, to the extent that the Petition would *indirectly* affect other airports, the precedent would be that a publicly-owned, public-use airport is subject to ANCA, no matter what cosmetic surgery its sponsor attempts to perform in order to transform it into

² "The steps you might take . . . are in some ways unprecedented. . . . You are certainly blazing a trail." See <https://www.youtube.com/watch?v=Hrebb4-mgXQ>, at 1:29PM. When asked to identify a precedent, the Town's outside counsel asserted that Kapalua Airport ("JHM") was "comparable," without elaboration. See <https://www.youtube.com/watch?v=f9hpHB0wUBE>, at 1:16PM. But JHM was a privately-owned, private-use airport that was converted into a publicly-owned, public-use airport. Not only is that scenario *not* comparable to the Town's plans for HTO, but FAA specifically advised that its guidance regarding JHM did not address "the applicability of ANCA to use restrictions under other circumstances." See Exhibit 21.

a private-use facility. In contrast, the Petition simply does not concern and would have no implications for privately-owned, private-use airports.

- **The Town's proffered interpretation of ANCA is implausible and incorrect.**

The Town argues that ANCA should be interpreted to apply to any airport that is open to the public, irrespective of whether its proprietor is a public or private entity—but *not* to apply to a publicly-owned airport that is private-use.³ The Town asserts that this is “commonsense” (see Response at 5 n.4), but the proposition is nothing of the kind. In fact, it is a cynical gambit to interpret ANCA so that HTO would be exempt from its terms, irrespective of the general consequences.⁴ By the Town's reasoning, any publicly-owned airport could avoid ANCA simply by declaring itself to be private-use—as East Hampton has sought to do. However, that would be fundamentally at odds with the underlying Congressional intent. “Congress enacted ANCA for the purpose of establishing a national noise policy.” See *Committee to Stop Airport Expansion v. Wilkinson*, 2012 WL 3058626 (N.Y. Sup. Ct. July 5, 2012). See also 49 U.S.C. § 47521(2)-(3) (“community noise concerns have led to uncoordinated and inconsistent restrictions on aviation that could impede the national air transportation system”; “a noise policy must be carried out at the national level”); Exhibit 21 (“[a] major purpose of ANCA is to prevent the proliferation of uncoordinated and inconsistent restrictions on aviation that could impede the national air

³ The Town further asserts that ANCA applies to a public-use airport only if it *also* has accepted federal funds. See Response at 5 n.4. See also Exhibit 30, at 10; Exhibit 31, at 11. But that claim directly contradicts *Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, 841 F.3d 133 (2d Cir. 2016)—a decision that is not just the law of the Second Circuit, but specifically concerns HTO—which confirmed that the applicability of ANCA to an airport does *not* turn on whether an airport has accepted federal funds. See *id.* at 148, citing *City of Naples Airport Authority v. FAA*, 409 F.3d 431, 433-34 (D.C. Cir. 2005).

⁴ The Town seems to have abandoned its argument, previously made in third-party state litigation, that a regional FAA official's failure to mention ANCA in a letter to the Town about the planned closure amounted to FAA guidance that ANCA would not subsequently be applicable. See Petition, at 8 n.8. As a result, the Town seemingly now implies that even its planned nominal 33-hour closure of HTO is not a necessary predicate for it to avoid ANCA—the Town simply could declare HTO to be unregulated at any time.

transportation system”). ANCA was enacted by Congress to prevent the piecemeal disassembly of the national system of airports via unilateral, parochial restrictions. ANCA was *not* intended to allow publicly-owned airports to avoid its expansive mandates by simply declaring themselves “private-use” and thus no longer subject to the law.⁵

At the same time, the Town’s proffered interpretation of ANCA would have the consequence of making any privately-owned airport which voluntarily is open for public-use also subject to ANCA. To Petitioners’ knowledge, that proposition never before has been advanced. It would have significant consequences for how such privately-owned airports operate, including whether they would continue to make themselves available to the public. Thus, not only has the Town obviously given no thought to the far-reaching implications of its claim, but this claim contradicts its purported interest in the welfare of private airports, as discussed *supra*. Indeed, the Town’s only interest is its self-interest in circumventing ANCA, irrespective of the implications.⁶ In contrast, the “common sense” interpretation of ANCA is that the statute applies to airports that are publicly-owned, and, among other things, prevents them from being converted to private-use status absent full compliance with the requirements of 14 C.F.R. Part 161, because the conversion itself would be an access restriction.⁷ Notably, it is undisputed that HTO is and will remain

⁵ Notably, the Town does not—and cannot—argue that any of the planned restrictions would be permissible, if ANCA applies. Each was adopted by the Town for the specific purpose of reducing operations at HTO—including the punitive and unequal schedule of landing fees for all but the smallest aircraft.

⁶ The Town previously argued in federal court that ANCA should not apply to airports that are privately-owned, contrary to its newly-proffered interpretation thereof. See Response and Reply Brief for Defendant-Appellant-Cross-Appellee Town of East Hampton, *Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, 2d Cir. No. 15-CV-2334, 15-CV-2465, 2016 WL 1380979, at *31 (April 4, 2016),

⁷ The Town also now invokes the definitions in 14 C.F.R. § 157.2 (see, e.g., Response at 12), even though the Town previously asserted that they were irrelevant, given the broader definitions incorporated into ANCA. See Petitioner’s Reply Brief, Supreme Court No. 16-1070, 2017 WL 2459668, at *10 (June 5, 2017).

publicly-owned, and the Town does not (and cannot, given its plan) dispute that the alleged private-use status conversion would constitute an access restriction.⁸

- **The Town has failed to demonstrate that FAA has provided contrary guidance.**

The Town also reveals that in May 2020, an FAA official provided two documents to the Town, which purportedly show that a publicly-owned airport can be converted to private-use status and thus no longer be subject to ANCA. See Response, at 6 and 16. But no statement from FAA to that effect actually has been provided, and the Town's hearsay about what FAA said and/or intended should not be countenanced. Moreover, the first of the documents (Exhibit 6 to the Response) appears to be a selective export of data from FAA's Airport Data and Information Portal ("ADIP") and provides virtually no information about them—e.g., if they were established or designated as private-use prior to the adoption of ANCA in 1990 (in which case they would be grandfathered; see 49 U.S.C. § 47524; 14 C.F.R. §§ 161.3, 161.7), and/or how they otherwise were labeled as private-use, and if ANCA was considered. Further, a cursory review of the list indicates that it is comprised primarily of special-purpose facilities such as hospital and police heliports—likely with safety/security issues, and which are not remotely akin to HTO.

The second document (Exhibit 7 to the Response) supposedly is a list of publicly-owned airports that specifically were converted from public-use to private-use—but again, virtually no information has been provided. As an initial matter, the Town asserts that the list is of airports that not only had been public-use but also "had previously been grant

⁸ The Town also asserts that it was informed by FAA that, for an agreement negotiated pursuant to Subpart B of 14 C.F.R. Part 161, "new entrants who are not notified [of the agreement] may not be subject to the restrictions." See Response, at 7. No source is cited for this proposition, and it contradicts both the text of the regulation and FAA guidance attached to its promulgation. See 14 C.F.R. § 161.105(c); *Notice and Approval of Airport Noise and Access Restrictions*, 56 Fed. Reg. 48661, 48672 (September 25, 1991).

obligated.” See Response, at 6 and 16. But the list simply does *not* say that—nor does that claim appear to be true. Of the 19 airports listed, only one ever has appeared in the FAA’s National Plan of Integrated Airport Systems (“NPIAS”)—a necessary predicate to the receipt of Airport Improvement Program (“AIP”) grants by an airport, as DOT is well aware. See, e.g., https://www.faa.gov/airports/planning_capacity/npias/ (providing links to the current NPIAS report as well as prior versions dating back to 2002).⁹ Regrettably, the Town appears to be mischaracterizing the list, perhaps in an effort to manufacture support for its already-discredited claim that ANCA applies only to airports which have accepted federal funds.

Further, upon scrutiny, many of the listed airports are facially irrelevant to the Town’s arguments, and the provided descriptions are inaccurate. For example, NASA’s Shuttle Landing Facility at the Kennedy Space Center (“TTS”) was built pre-ANCA, and contrary to the exhibit was *not* previously open to the general public. Moffett Federal Airfield (“NUQ”), another NASA facility (and a former naval air station), likewise does not appear to ever have been accessible to the general public. Shannons Pond Seaplane Base (“AA15”), according to FAA records, is privately-owned—not publicly-owned, as asserted by the exhibit. See Exhibit 22. Grapevine Airstrip (“88AZ”), a backcountry facility, was closed for *twenty years* before a volunteer restoration project enabled it to reopen—and it reportedly does *not* have any Prior Permission Required (“PPR”) restrictions, contrary to the exhibit. See, e.g., Exhibit 23. For other airports, any usage requirement appears to be a safety prophylactic and not a noise or access restriction (*i.e.*, procedures

⁹ Greeley Municipal Airport (“99Y”) previously appeared in the NPIAS; it appears to have been redesignated as NE46 in or about 2019, for reasons and under circumstances and conditions presently unknown.

for little-used, unattended, and/or dilapidated airports)—such as those in the Alaskan backcountry or other rural areas. But, in fact, for 16 of the 19 listed airports, *no* PPR restrictions actually are specified to have been adopted in their master records in the FAA’s ADIP database (<https://adip.faa.gov/agis/public/#/airportSearch>). See Exhibit 24.

In sum, the Town’s exhibits are not only unattributed but untrustworthy, and establish no informative precedents for HTO. Indeed, the Town knows better than to rely on “unsigned” and “surpris[ing]” FAA documents that just so happen to say exactly what the Town wants to hear. See *Friends of the East Hampton Airport*, 841 F.3d, at 140.¹⁰

- **The “new” airport will be the same facility as HTO for the purposes of ANCA.**

The Town also tries to argue that the “new” airport will be “separate and distinct” from HTO, apparently in further support of its contention that ANCA will no longer apply. See Response, at 10. But even if that distinction is relevant—*i.e.*, there is no dispute that the “new” airport will continue to be publicly-owned, so any identity shift should be moot—the changes that the Town intends to make at HTO will not actually modify the airport’s fundamental identity. Indeed, the Town all but admits that the changes will be simply an exercise in paperwork, with no effect on the airport’s physical plant or operational procedures (at least, for those aircraft not denied access to the airport). Contrary to the Town’s denial, its claim that the “new” airport will be a separate and distinct entity from HTO is *precisely* a “legal fiction,” which should deceive neither the law nor DOT.

For example, the Town in its Response acknowledges that the title to navigation aids will be transferred to the Town, but they will remain in operation. See *id.*, at 10. In a

¹⁰ There is also reason to be concerned about the authenticity of the Town’s Exhibit 7. In a state court proceeding, the Town recently filed a different version of the document, without the PPR-related annotations or the footnote which appear in the version that has been submitted to DOT. See Exhibit 25.

letter from the Town to the New York State Department of Transportation, recently submitted as an exhibit in state court proceedings, the Town states that it did not “anticipate changing or adding infrastructure or facilities at the airport. Key personnel would also remain the same.” See Exhibit 26. See *also* Exhibit 4 (Town news release stating that “the air navigation facilities currently available at the East Hampton Airport will be available upon activation” and “the private air traffic control tower will be in place consistent with how and when it has operated in the past”); Exhibit 16 (Town FAQ stating that at the airport “the facilities, infrastructure, and key personnel are expected to remain substantially the same”) and Exhibit 17 (stating that the “new” airport will have “the same safety and operational capabilities”).¹¹ In other words, the “new” airport is a chimera; by the Town’s own words, it will be the same facility—and thus subject to the same laws.

- **The Town misrepresents the factual and legal implications of its restrictions.**

The Town’s final gambit regarding ANCA is to argue that its planned restrictions will “treat all aircraft operators equally.” See Response, at 11. But that is no defense to the Petition. ANCA prohibits East Hampton from adopting noise or other access restrictions absent compliance with 14 C.F.R. Part 161—there is no authority for the proposition that ANCA tolerates restrictions which apply “equally.” Moreover, it is obvious that the restrictions will *not* treat all operators equally. The operator of an aircraft with a maximum takeoff weight (“MTOW”) over 50,000 pounds will be completely prohibited from operating at HTO; others will not. A commercial operator, or an operator of an aircraft deemed “noisy” by the Town, will be restricted to one round-trip operation per day; others

¹¹ Likewise, in state court, the Town has asserted that the “new” airport “will have *all* safety and operational capabilities available upon opening.” See Exhibit 30, at 12; Exhibit 31, at 12 (emphasis in original).

will not. Even the curfew will be selective; *i.e.*, government and certain other operations will be allowed, but most will not. See *also* footnote 5. As FAA has explained in another context, the requirement that an airport be accessible “is not accomplished by requiring existing users to substitute other aircraft.” See *In the Matter of Compliance with Federal Obligations by the City of Santa Monica*, FAA Docket No. 16-02-08, Director’s Determination, at 46 (May 27, 2008), *affirmed* 631 F.3d 550 (D.C. Cir. 2011).

The Town also questions whether Petitioners will be affected by the restrictions. See Response, at 11 n.7. There should be no doubt that they will. The Town publicly has asserted that its restrictions collectively are intended to impact 40% of the operations at HTO. See Exhibit 7 and Exhibit 9. Further, as the principal of Curtis Air Taxi has stated, the one round-trip per day restriction is an example of an unworkable restriction “because I may have a Tuesday-Wednesday where I won’t do anything, then Friday I do three or four [flights]. . . . I’m trying to grow my business, and this would make that basically impossible.” See Exhibit 27. In any event, it is well-established that “any person” may submit a petition to DOT. See *Third-Party Enforcement Complaint of the Electronic Privacy Information Center Against Northwest Airlines, Inc.*, DOT Order 2004-9-13, at 9 n.8 (September 10, 2004) (“[w]e believe that we serve the public interest most effectively by entertaining *all* complaints that raise timely and germane issues, without regard to the complainant”) (emphasis in original).

- **The Town effectively has conceded that its restrictions will violate the ADA.**

The Town only briefly argues that ADA preemption should not apply to its actions. In particular, the Town argues that the ADA does not apply to private-use airports. See Response, at 17. But even assuming for present purposes that the ADA would not apply

to a privately-owned, private-use airport, that is not what is at issue in this proceeding. Again, there is no dispute that the Town is a political subdivision of the State of New York; that HTO will continue to be a publicly-owned airport; and that 49 U.S.C. § 41713(b)(1) is explicit that a “political subdivision of a State . . . may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier.” Nor can there be any dispute that commercial operations are affected. The “Operator-Based Permission” requirement explicitly limits operations under 14 C.F.R. Part 135 as well as Part 91(K), and others would indirectly affect them—*e.g.*, limiting the hours at which they can operate and/or the aircraft that they can utilize.

Moreover, the Town invokes the “proprietary powers and rights” exemption to the ADA—but that is effectively a concession that the ADA applies and the only issue is if and how the exception also applies. And as the Town’s outside counsel previously has emphasized, it is “an extremely narrow exception to the otherwise wholesale preemption for local governments.” See Petition, at 14 n.17. Indeed, as previously noted (*see id.*), the Second Circuit in *National Helicopter Corp of America v. City of New York*, 137 F.3d 81 (2d Cir. 1998) concluded that certain restrictions were *not* allowed by the exemption, and further emphasized the importance of a documentary record to justify restrictions. See *also Friends of the East Hampton Airport*, 841 F.3d, at 139—again, a decision that is not just the law of the Circuit, but specifically concerns HTO—*quoting British Airways Board v. Port Authority of New York and New Jersey*, 558 F.2d 75, 84-85 (2d Cir. 1977) (ADA exemptions are extremely limited and “regulations must be consistent with federal policy; other, noncomplementary exercises of local prerogative are forbidden”). In this case, some if not all of the planned restrictions exceed the scope of the exemption, and violate

Section 41713(b)(1). For example, the Town’s planned restriction on the MTOW of aircraft (see, e.g., Exhibit 7 and Exhibit 9) is arbitrary, and not premised on the noise or any other documented effects of operations by those aircraft. Similarly, the threshold for “noisy” aircraft (91.0 EPNdB) ignores the fact that piston aircraft are evaluated by FAA based on a different standard (*i.e.*, dBA) and thus the Town’s plan would appear to illogically subject *all* piston aircraft to round-trip restrictions irrespective of their actual impacts.

- **The Town’s account of HTO’s history and its work with FAA is distorted.**

The Town suggests that it has been working in coordination with FAA to plan the “new” airport. See, e.g., Response, at 2, 6, 8, 16. But the Town actually has done so only in connection with the *technical* requirements of its plan—it has not resolved whether its planned restrictions would be *compliant* with federal law. See Petition, at 8 n.11. Indeed, as previously noted, FAA explicitly has cautioned the Town that the applicability of certain statutes is “unsettled” and thus that the Town cannot rely on a prior letter from a regional official—and ANCA and the ADA have not been discussed with FAA at all. See Exhibit 13. Moreover, the Town misrepresents the actions that FAA has taken on the technical side. The Town asserts that FAA has “formally authorized” the Town’s plans (see Response, at 9), but as previously noted, the cited letter was merely a “no objection” determination regarding airspace which explicitly did not relieve the Town of other compliance obligations (see Petition, at 8 n.11). Further, the Town previously failed to coordinate closely with FAA even on technical issues, given the significant list of flaws identified by FAA only after the Town unilaterally announced its plan. See Exhibit 13.

The Town also misrepresents numerous other critical facts, including by providing a self-serving and misleading portrayal of the impacts of aviation on the community,¹² and by providing an inaccurate description of its relationship with airport tenants and users. For example, the Town asserts that it did not pursue voluntary measures because there was “ample evidence that certain charter and air taxi operators were unwilling to commit to voluntary agreements.” See Response, at 7. Not only is this claim evasive on its face (e.g., who are the “certain” operators—and why would any issues with them justify making no effort at all with others?), but no exhibits or citations to this alleged “evidence” are provided. In reality, the Town has rebuffed repeated prior and recent requests from interested parties to discuss alternatives. See, e.g., Exhibits 28-29. See also footnote 18.

- **DOT can and should entertain the Petition, and do so on an emergency basis.**

As previously noted, in response to litigation that was filed in state court by third parties, the Town argued that any issues related to whether its restrictions violated federal law instead should have been raised at a federal administrative agency. See Petition, at 9 n.12. But now, the Town inconsistently argues that DOT should decline to entertain the instant Petition. See Response, at 13. The Town simply cannot have it both ways; *i.e.*, it cannot evade review of its illegal restrictions by making contradictory jurisdictional arguments that would serve to immunize it from being held accountable in any forum.¹³

¹² For example, the Town asserts that 80% of participants in workshops stated that continuing to operate HTO as a public-use airport was “unacceptable.” See Response, at 8. Putting aside that compliance with federal law is not a popularity contest, as well as any potential bias in the workshop process, the 80% figure was in reference to “the status quo” and not “a public-use airport”—and the report on the workshops explicitly stated that “the intent of the Public Engagement Process is not to count the number of people voicing any one opinion. Rather, it is designed to identify a range of positions and the underlying interests of each stakeholder group. *The following percentages should not be misconstrued to reflect a vote or a poll.*” See Exhibit 8 to the Response, at 9 (emphasis added).

¹³ Notably, *after* its Response was filed, the Town argued for the dismissal of two of the state court cases, *specifically citing the Petition pending in this docket*. See Exhibit 30, at 10; Exhibit 31, at 10 n.5.

The Town also asserts that if considered at all, this matter should be pursued at FAA. See Response, at 13. Petitioners previously have stated that, *if appropriate*, the Petition should be transferred to FAA. See Petition, at 9 n.13, But Petitioners also note that: (i) the separate complaint that they have filed at FAA invokes different statutes than the Petition, which are explicitly within the scope of 14 C.F.R. Part 16; (ii) ANCA and the ADA, in contrast, are not predicates for a Part 16 complaint (see Petition, at 9); (iii) there are no established procedures at FAA for the review of a formal complaint premised on ANCA;¹⁴ (iv) to Petitioners' knowledge FAA has never conducted a declaratory proceeding of this type, nor does the delegation language of 49 C.F.R. § 1.83(a)(9) address the proper situs for such a proceeding, in contrast to the "carry[ing] out" of powers;¹⁵ and (v) a petition alleging violations of the ADA is certainly a matter within DOT's proper jurisdiction, not that of FAA (see Petition, at 9; see also *Hawaiian Airlines Petition for a Declaratory Order*, DOT Order 2007-4-4, at 5 (April 5, 2007)).

Moreover, the Town asserts that DOT should not act on an emergency basis because Petitioners were supposedly tardy in filing their complaint. But the Town blatantly ignores the fact that it waited to adopt the restrictions that will be applicable effective May 19, less than two weeks from now, and instead has strung along HTO tenants and users

¹⁴ 49 C.F.R. § 161.503 indicates that FAA itself may initiate "formal action to terminate eligibility for airport grant funds or authority to impose or collect passenger facility charges," but those procedures are not defined, and are not relevant to HTO, given the Town's established lack of interest in further AIP grants (and that no PFC is assessed at HTO). Section 161.503 also generally states that FAA may "undertake informal resolution" based on a complaint, but it does not establish any *formal* procedure for the review of allegations that an airport is violating ANCA.

¹⁵ DOT previously has concluded that certain disputes regarding airport compliance are properly decided by it, not by FAA. As in prior cases, the Town "never explain[s] why the FAA would be better able to resolve" the Petition. See *In re Miami International Airport Rates and Charges*, DOT Order 96-12-23, at 17 n.11 (December 19, 1996). See also *Tinicum Township Privilege Fee Proceeding*, DOT Order 2008-3-18, at 34 (March 24, 2008) (although "FAA provides guidance," DOT "is responsible for resolving" disputes).

with evolving proposals and other delay tactics (*compare* Exhibit 7 and Exhibit 9).¹⁶ A new ordinance framework for the airport was adopted only on April 21—after the Petition was filed (see Exhibit 34 and Exhibit 8)—and the restrictions to be implemented through that framework were finalized only *yesterday*. See Exhibits 35-36.¹⁷ The Town also has made false promises that comments submitted to the Town about the restrictions would be made available for public scrutiny.¹⁸

The Town's intent appears to be to withhold all of the information that it can and to finalize its restrictions at the last minute to make them difficult to challenge; *i.e.*, it is the *Town* that has manufactured the emergency presently before DOT. The Town now should face the consequences of its gamesmanship. The Town will in no way be prejudiced by an expedited ruling; indeed, it will benefit—as will airport tenants and users—from clear guidance to the effect that the Town's convoluted closure-and-reopening scheme does nothing to change the obligations imposed by ANCA and the ADA, and that the Town's compliance with the statutes will continue to be required.¹⁹

* * * *

¹⁶ The Town also allegedly delayed their adoption to consider changes to the schedule of landing fees. See <https://www.youtube.com/watch?v=u93JQPliUL>, at 11:39AM. Without public discussion, the final version of the rules modifies the weight thresholds for the aircraft subject to the lowest and only non-punitive fees. *Compare* Attachment B to Exhibit 8 and Exhibit 36.

¹⁷ See also <https://www.youtube.com/watch?v=FjJvAgy-bcY>, at 2:59PM.

¹⁸ Although the Town has represented that over 500 public comments were submitted in March 2022 (see Declaration of Town Supervisor Peter Van Scoyoc, at ¶ 50), the Town has failed to acknowledge that none of them have been made public by the Town, apart from selective excerpts included in state court pleadings. Notably, Van Scoyoc submitted sworn affidavits in two of the state court proceedings—*East End Hangars*, Suffolk County Supreme Court No. 602799/2022, and *Coalition to Keep East Hampton Airport Open*, Suffolk County Supreme Court No. 602801/2022—which stated that: “The full set of comments regarding the Draft Scoping Outline will be publicly available in early April 2022 when the final scoping outline is prepared and presented.” See Exhibits 32-33. But the Town has failed to itself make any of the comments public, flatly contradicting its claim that public input is “a hallmark of the process.” See Response, at 2.

¹⁹ DOT often has conducted proceedings on an emergency basis, such as to ensure that a community is not deprived of air service. See, *e.g.*, *Essential Air Service at Page, Arizona and Prescott, Arizona*, DOT Order 2018-3-25 (March 27, 2018).

“Planes do not wander about in the sky like vagrant clouds. They move only by federal permission, subject to federal inspection, in the hands of federally certified personnel and under an intricate system of federal commands. The moment a ship taxis [sic] onto a runway it is caught up in an elaborate and detailed system of controls.” *Northwest Airlines, Inc. v. Minnesota*, 322 U.S. 292, 303 (1944) (Jackson, J., concurring). ANCA and the ADA help to ensure that the same principle also applies to airports.

Accordingly, for the reasons discussed in this Reply and previously briefed, DOT should initiate a proceeding—and given the Town’s confirmation that it will continue to implement a plan that openly defies federal law, do so on an emergency basis—to prevent imminent harm to tenants and users of HTO, as well as the establishment of a precedent that would do long-term damage to the national system of airports.

Respectfully submitted,



Jol A. Silversmith, Esq.
Barbara M. Marrin, Esq.
KMA Zuckert, LLC
888 17th Street, NW, Suite 700
Washington, DC 20006
(202) 298-8660
jsilversmith@kmazuckert.com
bmarrin@kmazuckert.com

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- 1) Bill O'Connor, Cooley LLP, HTO After Expiration of FAA Grant Assurances (October 19, 2021)
- 2) Letter from Jay Schneiderman, Supervisor, Town of Southampton, to Peter Van Scoyoc, Supervisor, Town of East Hampton (December 10, 2021)
- 3) Christopher Walsh, "East Hampton Likely to Temporarily Close Airport," East Hampton Star (October 21, 2021)
- 4) Town of East Hampton, Press Release, The East Hampton Town Board Votes to Delay Deactivation of the East Hampton Airport and Activation of the New Private-Use Airport After Receiving Assurances from the FAA (February 17, 2022)
- 5) East Hampton Resolution No. 2022-190, SEQRA Negative Declaration to Deactivate EH Airport (January 20, 2022)
- 6) East Hampton Resolution No. 2022-342, Resolution Amending SEQRA Negative Declaration to Deactivate East Hampton Airport and Open New Private Use Airports and Related FAA Required Action (March 3, 2022)
- 7) Bill O'Connor and Andrew Barr, Cooley LLP, SEQRA Study Phase and Data Collection—Proposed PPR Framework for 2022 Season (March 1, 2022)
- 8) Town of East Hampton, Rules and Regulations for East Hampton Airport (Effective Date: May 19, 2022)
- 9) Bill O'Connor, Cooley LLP, SEQRA Study Phase and Data Collection—Final PPR Framework for 2022 Season (April 12, 2022)
- 10) Letter from Jim Brundige, Airport Director, to Airport Users, regarding "Special Procedures" (March 28, 2022)
- 11) Cooley LLP, Recommendation Regarding the East Hampton Airport (January 18, 2022)
- 12) Letter from David A. Fish, Director, Airports Division, FAA Eastern Region, to Peter Van Scoyoc, Supervisor, Town of East Hampton (November 6, 2020)
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- 14) Town of East Hampton, Notice (February 1, 2022)

- 15) Town of East Hampton, Press Release, East Hampton Town Board Committed to Change at East Hampton Airport in Order to Address Noise, Traffic, Environmental, Safety Concerns (February 3, 2022)
- 16) Town of East Hampton, Frequently Asked Questions: East Hampton Airport (February 7, 2022)
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- 20) Bill O'Connor, Cooley LLP, Overview of Legal Considerations Applicable to John Wayne Airport (July 22, 2019)
- 21) Letter from Leonard L. Griggs, Jr., Assistant Administrator for Airports, FAA, to Rex D. Johnson, Director, Hawaii Department of Transportation (July 6, 1992)
- 22) FAA, Airport Master Record, Shannons Pond Seaplane Base (April 21, 2022)
- 23) Arizona Pilots Association, Arizona Airport Focus: Grapevine (88AZ), (July 16, 2018) (<https://azpilots.org/news/50039-az-airports/50473-arizona-airport-focus-grapevine-88az>)
- 24) Comparison of Respondent's Exhibit 7 to FAA Master Records for the Listed Airports
- 25) East End Hangars, Inc., et al. v. Town of East Hampton, Suffolk County Supreme Court No. 602799/2022, Exhibit 109 to the Supplemental Affidavit of Supervisor Peter Van Scoyoc (April 26, 2022)
- 26) East End Hangars, Inc., et al. v. Town of East Hampton, Suffolk County Supreme Court No. 602799/2022, Exhibit 12 to the Supplemental Attorney Affirmation of William V. O'Connor, Esq. (May 2, 2022)
- 27) Michael Wright, "Pilots Fight to Stop Plan," East Hampton Press (April 21, 2022)
- 28) East Hampton Community Alliance, Open Letter, Dan's Papers (April 15, 2022)
- 29) Letter from Aircraft Owners and Pilots Association, Eastern Region Helicopter Council, General Aviation Manufacturers Association, Helicopter Association International, National Air Transportation Association, and National Business

Aviation Association, to Carole Brennan, Clerk, Town of East Hampton, regarding “Proposed Prior Permission Required (PPR) Framework” (March 18, 2022)

- 30) East End Hangars, Inc., et al. v. Town of East Hampton, Suffolk County Supreme Court No. 602799/2022, Reply in Support of Respondent’s Motion to Dismiss the Petition (May 2, 2022)
- 31) Coalition to Keep East Hampton Airport Open, et al. v. Town of East Hampton, Suffolk County Supreme Court No. 602801/2022, Reply in Support of Respondent’s Motion to Dismiss the Petition (May 2, 2022)
- 32) East End Hangars, Inc., et al. v. Town of East Hampton, Suffolk County Supreme Court No. 602799/2022, Defendant’s Exhibit Affidavit of Supervisor Peter Van Scoyoc (April 4, 2022)
- 33) Coalition to Keep East Hampton Airport Open, et al. v. Town of East Hampton, Suffolk County Supreme Court No. 602801/2022, Affidavit of Supervisor Peter Van Scoyoc (April 4, 2022)
- 34) East Hampton Resolution No. 2022-560, Adopt Local Law Amending Chapter 75 (Airport) of the East Hampton Town Code (April 21, 2022)
- 35) East Hampton Resolution No. 2022-630, Adopt Rules & Regulations for Use of East Hampton Airport JPX (May 5, 2022)
- 36) Town of East Hampton, Rules and Regulations for East Hampton Airport (Effective Date: May 19, 2022)

Certificate of Service

I hereby certify that I have this day caused the foregoing pleading to be served on the following persons at the following addresses by electronic mail:



Jol A. Silversmith

Town Board Supervisor Peter Van Scoyoc
159 Pantigo Road
East Hampton, NY 11937
pvanscoyoc@ehamptonny.gov

Airport Manager James Brundige
173 Daniels Hole Road
Wainscott, NY 11975
jbrundige@ehamptonny.gov

Town Clerk Carole Brennan
159 Pantigo Road
East Hampton, NY 11937
cbrennan@ehamptonny.gov

Town Attorney John Jilnicki
159 Pantigo Road
East Hampton, NY 11937
jjilnicki@ehamptonny.gov

Bill O'Connor, Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
woconnor@cooley.com

J. Parker Erkmann, Cooley LLP
1299 Pennsylvania Ave., NW, Suite 700
Washington, DC 20004
perkmann@cooley.com

Andrew D. Barr, Cooley LLP
1144 15th Street, Suite 2300
Denver, CO 80202
abarr@cooley.com

Kelsey Spector, Cooley LLP
3 Embarcadero Center, 20th Floor
San Francisco, CA 94111
kspector@cooley.com

Annie Petsonk
Principal Deputy Assistant Secretary for
Aviation and International Affairs
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
carol.petsonk@dot.gov

Todd Homan, Director
Office of Aviation Analysis
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
todd.homan@dot.gov

Peter Irvine, Deputy Director
Office of Aviation Analysis
Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590
peter.irvine@dot.gov

Exhibit 21



U.S. Department
of Transportation
**Federal Aviation
Administration**

Jul 6, 1992

Mr. Rex D. Johnson
Director
Hawaii Department of Transportation
869 Punchbowl Street
Honolulu, Hawaii 96813-5097

Dear Mr. Johnson:

This is in response to your March 13 letter to Mr. Jeffrey Shane and his reply to you of April 3 in which he indicated that the Federal Aviation Administration (FAA) would review the questions you raised regarding the State's ability to maintain the existing limitations on West Maui Airport if the airport is purchased by the state. We have reviewed the limitations in light of existing law, particularly the Airport Noise and Capacity Act of 1990, 49 U.S.C. App. sec. 2151 et. seg., (ANCA) and airport grant compliance requirements under the Airport and Airway Improvement Act, as amended (Airport Act).

Regarding applicability of ANCA, only two of the existing restrictions that the state proposes to maintain at West Maui are contained in 1986 zoning ordinance No. 1535: (1) the noise level limit on operations by propeller-driven aircraft of 12,500 pounds or less and (2) the EPNdB limits for takeoff, sideline, and approach noise.

ANCA does not apply to restrictions on operations by propeller driven aircraft weighing 12,500 pounds or less because none of these aircraft are classified as stage 2 or 3, and ANCA governs restrictions on operations by stage 2 and 3 aircraft.

The previously-adopted EPNdB limits need not undergo the process established under the Airport Noise and capacity Act. The factors relevant to our determination on West Maui include:

(1) the airport is currently privately-owned and private use, (2) the restriction was adopted well before the transfer of ownership and does not appear to have been put into effect with the intent of circumventing ANCA, and (3), in these circumstances, the transfer of ownership will make the airport available for public use for the first time. A major purpose of ANCA is to prevent the proliferation of uncoordinated and inconsistent restrictions on aviation that could impede the national air transportation system. The relaxation of existing restrictions and improvement of the availability of airports for public use is consistent with

this purpose. In these circumstances, it would not serve the purpose of ANCA to interpret ANCA to apply because the transfer, even with the existing restriction in place, represents an overall improvement in airport access. We do not here address the applicability of ANCA to use restrictions under other circumstances.

If these same factors can be demonstrated regarding the remaining restrictions, ANCA also would not apply to them. FAA requires evidence that they have been implemented and we welcome any additional information that you may be able to provide. We have also contacted the airport manager for further documentation.

We also wish to point out that, if the state proposes to implement new restrictions or to tighten existing ones, it will be required to comply with ANCA and 14 CFR Part 161.

As to the Federal grant assurances, they are not applicable to West Maui provided that no Federal funds are used to purchase or improve the airport. However, if the state applies for Federal grant funds in the future for use at West Maui Airport, then it must comply with the applicable grant assurances. Any ban on helicopter or jet operations would appear to violate Federal grant agreement Assurance No. 22, that the airport operator "will make its airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical uses." (Also see section 511(a)(1) of the Airport and Airway Improvement Act, as amended). The state may use airport-generated revenues from other state-owned airports for capital improvements and maintenance expenses at West Maui Airport without violating the revenue use limitation under the Federal grant assurances (see section 511(a)(12) of the Airport and Airway Improvement Act, as amended). The revenue use limitation permits use of airport-generated revenues for capital and operating costs of the local airport system.

This letter pertains solely to the Department of Transportation/FAA interests in the airport's compliance with ANCA and the Federal grant assurances. It is intended only as a response to your concerns about compliance with those requirements.

I hope that this addresses your basic questions. We will provide you with further FAA decisions on ANCA applicability as soon as we have received and reviewed documentation implementing the restrictions.

Sincerely,

Leonard L. Griggs,
Assistant Administrator for Airports

Exhibit 22



PRINT DATE: 5/2/2022
AFD EFF 04/21/2022
FORM APPROVED OMB 2120-0015

FAA SITE NR: 50154.*C


/ / / / /

113 LAST INFO REQ: 05/03/2021

Exhibit 23



Arizona Airport Focus: Grapevine (88AZ)

 Published: 16 July 2018



The recent AZ Airport Focus articles have focused on what to do around the airport, based on what the communities have to offer. This month is different, and we'll focus on the nothingness around this particular airport. In this case, getting there is getting away, and it can be pure bliss. As much of our membership can attest, the Grapevine airstrip (88AZ) on the southwest shore of Lake Roosevelt has collected much of our membership's DNA in the form of blood, sweat, and tears through the multi-year renovation that APA spearheaded. APA supporters transformed Grapevine from a brush-strewn length of deteriorated asphalt into the

gem it is today. It is now the pride of the US Forest Service as the only one of two paved runways in their national inventory. The cleaning, crack-sealing, and top-coating are complete, and the markings were completed thanks to the Phoenix 99's. It also highlighted what can happen when volunteer organizations cooperate with the government, and it's serving as a model for more airports. APA has published several articles and Mark Spencer has fully detailed the efforts taken to truly transform the dilapidated strip into what it now is, so this article will focus on getting there and getting away!



A mere 50 miles nearly due East of Phoenix, getting to Grapevine may not seem like much of a jaunt. You may ask yourself if it's even worth going, since the engine will just be getting warmed up by the time you get there. Leaving home airports such as Falcon Field, Deer Valley, Marana, or Ryan, the hustle and bustle of simply taxiing for departure quickly falls way to a dramatic overflight of the Mazatzal range that includes Four Peaks. It's here that you can visualize Arizona's rugged landscape. Four Peaks tops out at 7657' MSL and just a few miles to the South, Grapevine sits at 2329' MSL, demonstrating the majesty of this range. There are several other peaks over 6000' MSL, so while going over the range is an option, the year-round thermals can make for a more interesting flight than anticipated.

While the Grand Canyon is amazing from the air, the Salt River Canyon can be even more dramatic. Running from the Roosevelt Dam to Saguaro Lake, the canyon is lined with steep rocky cliffs. The canyon is under the Salt River Bald Eagle Breeding Area wildlife area and

overflight is recommended at least 2000' AGL. The scenery passing below is just as spectacular from that altitude, so respecting the area is easy and reducing the chance of a bird strike is well worth it. Cruising in from the south near Weaver's Needle makes for an equally fantastic overflight. Again, altitude is required to clear the range and get to the lake.



Once near the south end of Lake Roosevelt, make a call on CTAF 122.9 and set up for landing. The runway slopes 1.3

degrees with the high end to the south. Calm-wind landing is typically uphill on Runway 17. This approach takes you over the shoreline and water of the lake. The tall saguaro cactus waving to you at the



approach end is shorter than it appears on final, but is an obstruction nonetheless. The runway is relatively long and wide for a "backcountry" strip at 3800' x 40'. Even on approach, the effort poured into the strip is apparent as the smooth asphalt and clear markings get closer. After landing and engine shutdown, the silence and peacefulness of the area sets in. Pull the plane off the runway and into one of the many spots along either side of the runway at midfield and then relax. We've seen everything from Light Sport Aircraft to business twins and even amphibious seaplanes taking advantage of this fantastic airstrip.

Getting there is getting away from it all. With no vehicular access and sitting on Forest Service property, there are no residential areas or retail establishments nearby. The closest of either are in the town of Roosevelt, approximately 5 miles South. The Sonoran Desert scenery envelopes you as you sit back and relax in the shade of your wing or the APA volunteer-installed gazebo. Grapevine makes a perfect morning or afternoon getaway to just go and relax, or an even more perfect airplane camping destination. In addition to the gazebo, APA volunteers installed a firepit and provided picnic tables. The flat parking areas make an ideal place to set up a tent and hang out under a wing for the weekend. From September through May, APA provides a porta-potty onsite to make things a little more comfortable. Please check burn policies in effect in Tonto Forest and plan meals accordingly.





A moderate hike takes you to the shore of the lake where you can cast a line in the water looking for bass, crappie, sunfish, and catfish. If you decide to fish, make sure you obtain a fishing license from AZ Game and Fish. You can purchase them online through their website. Hikes to the east and west of the airstrip take you through ravines with aggressive slopes, so wear shoes suitable for hiking and bring plenty of water. Besides the fishing and hiking, perhaps the best part about Grapevine is the ability

to just sit and relax. No worries about what to do next or how to make a schedule work – just relaxing. As an added bonus, APA hosts a monthly barbeque on the third Saturday of each month from September through May. Bring an appetite and a few dollars as a donation towards the groceries and enjoy great hangar flying with some amazing people. There is always enough food, so bring friends along and introduce them to the reason you fly. This isn't an experience you just get to drive to.

Once you've had your fill of relaxation or realize you need to get back to reality, pull your plane back out on the runway and plan for a north departure down Runway 35. Wind-permitting, this allows a downhill takeoff with no immediate terrain concerns. Departure is over the lake and APA recommends noise abatement by climbing away from local boaters or fishermen below. Like most of Arizona's airports in the summer, density altitude will affect takeoff and climb behavior, so pay attention to your aircraft performance and personal minimums.



In 2017, Grapevine officially opened to the public, no prior permission is required! While charted as private, due to some complicated details, the strip is a USFS recreational airstrip. As such, no training activities or touch and goes are permitted. The airstrip is open to the military and they often perform exercises on or near the airstrip. It is always a good idea to fly the runway before landing to ensure that it is clear. The Forest Service has also asked that pilots avoid overflight of the Tonto National Monument

only 3 1/4 miles to the west-northwest of the strip or any of the campgrounds to the east and west. The campgrounds are easily spotted by the blue-topped shade structures scattered throughout. Please visit the APA's website to download and print the [Grapevine safety](#).

brochure in PDF (<http://azpilots.org/images/attachments/GrapevineInfoPamphlet.pdf>) under the Pilot Resources tab. The brochure provides detailed airport information and standard procedures in place. If planning to camp, we ask that you send a quick note to grapevine@azpilots.org (<mailto:grapevine@azpilots.org>) letting us know. We are cooperating with the US Forest Service on several other airstrips in Arizona and a use case will help establish the demand for more.

Grapevine holds a special place in my heart, as it was my introduction to APA as an organization and to Arizona's backcountry. I spent many weekends with dozens of other volunteers transforming the airstrip into what it is today. Though Grapevine is really "backcountry light," it offers a great introduction to a different kind of flying and should not be missed. I hope to see you out there!

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Exhibit 24

Comparison of Respondent's Exhibit 7 to FAA Master Records for the Listed Airports

Exhibit 7					Analysis Based on FAA Master Records	
LocationID	State	City	FacilityName		PPR?	Remarks in FAA Master Record
0AA1	AK	YAKATAGA	YAKATAGA	Turf; PPR; owned by FAA	Yes	<p>A 033 RY 08/26 SOFT WHEN WET. PUDDLES 3 IN DEEP MIDFIELD NW SIDE 25 FT X 35 FT WIDE. 3 IN RUTS LENGTH OF RY. GRASS ON RY SFC UP TO 12 IN TALL.</p> <p>A 033 RWY 08/26 1 EXTREMELY SOFT WHEN WET. LONGITUDINAL RUTS TO 3 IN FOR SEVERAL 100 FT NEAR MIDFIELD.</p> <p>A 042 RY 08/26 NSTD; RY HAS DILAPIDATED THLD PANELS.</p> <p>A 083 WINDSOCK LOCATED ON TWR N OF PARKING RAMP. MAY BE UNRELIABLE DUE TO TREES.</p> <p>A 110-001 WX CAMERA AVBL ON INTERNET AT HTTPS://WEATHERCAMS.FAA.GOV</p> <p>A 110-002 ERRATIC WINDS ON FINAL APCH FM OCEAN & MOUNTAINS</p> <p>A 110-003 EAGLES CONGREGATE AT STREAMS ON BOTH THLDS</p> <p>A 110-004 PRIOR WRITTEN PERMISSION REQUIRED TO USE RUNWAY</p> <p>A 110-005 USE OF ACFT OVER 5600 LBS GROSS AND NON HIGH FLOTATION TYPE TIRES EQUIPPED ACFT PROHIBITED FROM AUG 15 TO MAY 15</p> <p>A 110-006 MTNS N THRU NE TO ESE; 2258 FT HILL 3 NM E</p>
0AA4	AK	FAREWELL	FAREWELL	gravel/dirt; PPR; owned by FAA	No	<p>A 033 RWY 08/26 2-5 INCH ROCKS ON RWY AND SOME RUTS UP TO 6 IN. BRUSH 3-7 FT TALL ALONG SIDES OF RWY.</p> <p>A 033 RWY 08/26 1 GRAVEL SFC MAY BE SOFT AND UNUSBL. NO SNOW REMOVAL.</p> <p>A 110-001 RWY 08/26 NOT MAINTAINED. RWY COND NOT MONITORED. RECOMMEND VISUAL INSPECTION PRIOR TO USE.</p> <p>A 110-002 LARGE ROCK ON RWY, MID FLD.</p>

Exhibit 7					Analysis Based on FAA Master Records	
LocationID	State	City	FacilityName		PPR?	Remarks in FAA Master Record
1AK3	AK	COLD BAY	PORT MOLLER	gravel/dirt; PPR; owned by BLM	No	A 014 907-267-1246 A 110-001 RECOMMEND VISUAL INSP PRIOR TO LANDING A 110-002 NO SVCS AVBL.
AA15	AK	DILLINGHAM	SHANNONS POND	seaplane base; PPR; owned by State of Alaska	No	A 070 FUEL AVBL 24 HRS WITH CREDIT CARD A 075 TIE-DOWN FEE FOR TRANSIENT AIRCRAFT. CONTACT ARPT OWNER AT 907-842-2735. A 110-001 SW SIDE OF LAKE SHALLOW.
88AZ	AZ	ROOSEVELT	GRAPEVINE AIRSTRIP	concrete; PPR; owned by US Forest Svc	No	A 110-001 USE AT PILOTS OWN RISK, NO TRAINING OR TOUCH AND GOES PERMITTED. A 110-002 CONTACT GRAPEVINE@AZPILOTS.ORG FOR CAMPING AND USE INFO. A 110-003H AZARDOUS RUNWAY EDGES, AVOID USAGE WHEN CROSS WINDS PRESENT. A 110-004 RISING TERRAIN WEST OF RWY. A 110-005 MILITARY TRAINING ACTIVITY POSSIBLE. A 110-006 DIRT PARKING EAST SIDE OF RWY AT MIDFIELD, NO TIE DOWNS. LIMITED RAMP PARKING W/TIE DOWNS AT WEST RAMP. CALM WIND RWY 17. A 110-007 AVOID OVERFLIGHT OF TONTO NATIONAL MONUMENT, 3.25 MILES WNW OF AIRSTRIP, OR ANY CAMP GROUNDS. A 110-008 FOR CD CTC ALBUQUERQUE ARTCC AT 505-856-4861.
NUQ	CA	MOUNTAIN VIEW	MOFFETT FEDERAL AFLD	concrete; PPR; owned by NASA	Yes	A 010 LESSEE: PLANETARY VENTURES A 014 ATC MGR PHONE: 650-603-9211 A 070 JET A AVAIL 24 HRS. A 081 WHEN TWR CLSD, ACTVT REIL RWY 14L; MALSR RWY 32R; PAPI RWY 14L & 32R; HIRL RWY 14L/32R & 14R/32L- CTAF. A 086 FSS-OAKLAND OAK-NOTAM NUQ A 110-001 BEARING STRENGTH RY 14L: S64 T110 ST144 SBTT410 TDT528 TRT390). A 110-002 BEARING STRENGTH RY 32R: S82 T142 ST175 TT300 DDT609, TDT814. A 110-003 JASU - (AM32A-60) (AM32A-86). A 110-005 FLUID - SP LOX - LTD AVBL.

Exhibit 7					Analysis Based on FAA Master Records	
LocationID	State	City	FacilityName		PPR?	Remarks in FAA Master Record
						<p>A 110-009 RSTD - PPR ALFD OPS OPR 24 HRS, TRAN ALERT SVC 24 HRS, C650-386-0677. RECOMMEND SID, EXP DELAY FOR RADAR VECTORS.</p> <p>A 110-012 CSTMS/AG/IMG - CSTMS, AG, IMG AVBL ONLY BY PN MON-FRI 1700-0100Z++ EXC HOL.</p> <p>A 110-016 CAUTION - POSSIBLE STRONG UPDRAFT VCNTY NASA/AMES WIND TUNNEL LCTD W SIDE OF AFLD. BIRD HAZ.</p> <p>A 110-017 NS ABTMT - NO JET DEP RWY 14L/R BTN HRS OF 0700-1300Z++. A 110-026CAUTION: AIRPORT SIGNAGE UNAVBL TO INCL RWY, TWY, INST, LOC, DIREC, DESTN, AND INFO SIGNS.</p> <p>A 110-028 BIRD HAZARD LIKELY TO BE HIGHEST FROM OCT TO MAR (PHASE II) AND LOWER FROM APR TO SEP (PHASE I).</p>
TTS	FL	TITUSVILLE	NASA SHUTTLE LANDING FACILITY	concrete; PPR; owned by NASA	Yes	<p>A 017 FOR PPR CALL 321-867-2100. ARPT UNATNDD HOL.</p> <p>A 040 RY 15/33 NSTD HIRL; 85 FT FM RY EDGE.</p> <p>A 046 CL RWY 15-33 NSTD, 10,000'.</p> <p>A 081 ATC CTL. FOR HIRL RY 15/33 CTC TWR - CTAF.</p> <p>A 086 FSS-ST. PETERSBURG PIE-NOTAM PIE</p> <p>A 110-004 FUEL - MUST BE SKED 24 HR IN ADVANCE. J8</p> <p>A 110-005 BEARING STRENGTH RWY 15-33: ST175</p> <p>A 110-006 RSTD: OFFL BUS ONLY. FOR PPR FONE C321-867-2100. AFLD UNATTENDED HOL.</p> <p>A 110-007 CAUTION: NUMEROUS BIRDS IN VCNTY OF ARPT. PART OF RAMP NOT VIS FR TWR. PORTIONS OF RWY NOT VIS FR BASE OPS.</p> <p>A 110-008 MISC: THE MID 8000' OF RWY 15-33 GROOVED. LTD TWY AND RAMP SPACE.</p> <p>A 110-009 JASU: MUST BE SKED IN ADVANCE. 3(M32A-60A)</p> <p>A 110-010 WX DSN PHONE (45 WX SQN) DSN 467-8484, C321-853-8484. BACK UP WX SPT, CTC 26 OWS AT DSN 331-2651, C318-529-2651.</p>

Exhibit 7					Analysis Based on FAA Master Records	
LocationID	State	City	FacilityName		PPR?	Remarks in FAA Master Record
						A 110-011 FOR CD OR TO CNL IFR WHEN ATCT CLSD, CTC ORLANDO APCH AT 407-825-3398.
3IS9	IL	GRAND TOWER	GRAND TOWER	helipad; PPR; owned by municipality	No	A 052 RWY H1 100 FT TERRAIN 100 FT NW. A 057 RWY H1 APCHS INBOUND ARE: 210 DEG - CTL OBSTN IS 15 FT POLE; 100 FT FM FATO EDGE & 25 FT LT OF CNTRLN; SLOPE = 6.1; 300 DEG - CTL OBSTN IS 15 FT BLDG; 100 FT FM FATO EDGE; SLOPE = 6:1. A 110-001 (E111-3) UNAUTHORIZED PERSONS RESTRICTED FROM ACCESS DURING FLT OPS BY USE OF NON-OBSTRUCTING SAFETY BARRIER. FIRE PROTECTION PRVDD IN ACCORDANCE WITH LOCAL FIRE CODES & OR FAA AC 150/5390-2. A 110-002 FOR CD CTC KANSAS CITY ARTCC AT 913-254-8508.
53KT	KY	LIBERTY	LIBERTY-CASEY COUNTY	asphalt; PPR; owned by Casey County	No	A 014 ARPT BOARD CHMN. A 058 RWY 01 10 FT GROUND AND TREES 0-200 FT FROM RY END, 100 FT RIGHT. A 058 RWY 19 +16 FT ARPT ROAD 0-200 FT FROM RY END, 100 FT RIGHT. A 110-001 RWY 01 LGTD & MRKD RDO TWR 310' VCNTY OF RWY. A 110-002 EVIDENCE OF VEHICULAR TFC ON AIR OPS AREAS. A 110-004 VFR OPNS DALGT ONLY. A 110-005MULTICOM - 122.900 A 110-006 FOR CD CTC INDIANAPOLIS ARTCC AT 317-247-2411.
5KY4	KY	ELKTON	STANDARD FIELD	turf; PPR; owned by County	No	A 042 RWY 13 ORANGE CONES. A 042RWY 31 ORANGE CONES. A 052 RWY 31 +5 FT BLDG 220 - 442 FT R OF RWY. A 110-002 TURF EXPERIENCE & ARPT FAM REQ; COND VARY; WILDLIFE ON & INVOF. A 110-005 FOR CD CTC CAMPBELL APCH AT 270-798-6441. A 30A RWY 31 4 FT FENCE 519 FT FM THR.

Exhibit 7					Analysis Based on FAA Master Records	
LocationID	State	City	FacilityName		PPR?	Remarks in FAA Master Record
9KY9	KY	PAINTSVILLE	PAINTSVILLE- PRESTONSBURG-COMBS FIELD	asphalt; PPR; owned by County	No	A 011 AIR BOARD CHAIRMAN LARRY SHORT A 052 RY 13 HAS 300-500 FT HILLS 3000 FT FROM RY END. A 058 RY 13 20 FT TREES 150 FT FROM RY END & 60 FT LEFT. A 058RWY 31 12 FT TREES 150 FT FROM RY END & 45 FT LEFT. A 110-001 ARPT LCTD IN MTN RIVER VALLEY. DFCLT APPROACHES TO RY. A 110-002 FOR CD CTC INDIANAPOLIS ARTCC AT 317-247-2411.
4MN5	MN	GRACEVILLE	KAPAUN-WILSON FIELD	turf; PPR; owned by City	No	A 042 RY 17/35 MARKED WITH YELLOW CONES. A 07 5NO RAMP AVAILABLE. A 110-001 FOR CD CTC MINNEAPOLIS ARTCC AT 651-463-5588.
9MN3	MN	BARNESVILLE	BARNESVILLE MUNI	turf; PPR; owned by City	No	A 014 TREVOR MOEN 218-354-7645 BVILLEPW@BVILLEMN.NET A 042 RWY 17 MKD WITH YELLOW CONES. A 110-002 ARPT CLSD WINTER MONTHS. A 110-003 FOR CD CTC MINNEAPOLIS ARTCC AT 651-463-5588.
NE46	NE	GREELEY	GREELEY MUNI	turf; PPR; owned by City	No	A 013 CELL PHONE FOR VILLAGE CLERK, KIM EVERHART: (308) 730-1714 A 042 13/31 MARKED WITH YELLOW BOUNDARY CONES. A 110-001 FOR CD CTC MINNEAPOLIS ARTCC AT 651-463-5588.
OG62	OR	MYRTLE CREEK	MYRTLE CREEK MUNI	helipad; PPR; owned by municipality	No	A 110-001 FOR CD CTC SEATTLE ARTCC AT 253-351-3694.
5SD3	SD	BOWDLE	BOWDLE MUNI	turf; PPR; owned by City	No	A 040 RWY 13/31 OTS INDEFLY. A 042 RWY 13 MKD WITH YELLOW AND BLACK METAL A-FRAME MKRS. A 042 RWY 31 MKD WITH YELLOW AND BLACK METAL A-FRAME MKRS. A 080 ARPT ROTG BCN OTS INDEFLY. A 110-001 RY 13 HAS 4 FT FENCE 200 FT FROM THR.

Exhibit 7					Analysis Based on FAA Master Records	
LocationID	State	City	FacilityName		PPR?	Remarks in FAA Master Record
						A 110-002 RY 31 HAS 4 FT FENCE 250 FT FROM THR. A 110-003 ARPT CLSD 1 NOV-15 APR. A 110-004 WILDLIFE ON AND INVOF ARPT A 110-005 ARPT CLSD SS-SR. A 110-006 FOR CD CTC MINNEAPOLIS ARTCC AT 651-463-5588.
SD50	SD	HARROLD	HARROLD MUNI	composite; PPR; owned by City	No	A 033 RY 15/33 CNTR 24 FT IS A DOUBLE CHIP SEAL. A 042 15/33 MARKED WITH YELLOW & BLACK A-FRAME MARKERS. A 070 FOR FUEL PHONE 605-875-3375. A 110-001 RY 15/33 HAS CULTIVATION 90 FT BOTH SIDES OF CNTRLN OF RY. A 110-002 WILDLIFE ON AND INVOF ARPT. A 110-003 FOR CD CTC MINNEAPOLIS ARTCC AT 651-463-5588.
2XA0	TX	CROWELL	FOARD COUNTY	asphalt/turf; PPR; owned by County	No	A 033 RWY 17/35 RY PAVEMENT HAS GRASS ENCROACHMENT. A 040 RWY 17/35 MIRL OTS INDEFY. A 042RWY 17 RY MARKINGS FADED. A 042 RWY 35 RY MARKINGS FADED. A 058 +10 FT TREE 55 FT LEFT 135 FT SOUTH OF THLD. A 080 ROTG BCN OTS INDEFY. A 110-001 ARPT CLSD NIGHTS. A 110-002 FOR CD CTC FORT WORTH ARTCC AT 817-858-7584.
4WI9	WI	CORNELL	CORNELL MUNI	asphalt; PPR; privately owned	No	A 040 RWY 09/27 NSTD LIRL; THLD LGTS RED. LIRL OTS INDEFY. A 081 FOR LIRL RY 9/27 KEY 122.8 3 CLICKS. A 081 FOR ROTG BCN KEY 122.8 5 CLICKS. A 110-001 CONFIRM WINTER COND & SNOW REMOVAL WITH AMGR CALL 715-239-3716. A 110-002 FOR CD CTC MINNEAPOLIS ARTCC AT 651-463-5588.

Exhibit 25

Exhibit 109

PUBLICLY OWNED AIRPORTS that transitioned from public-use to private-use

LocationID	State	City	FacilityName
0AA1	AK	YAKATAGA	YAKATAGA
0AA4	AK	FAREWELL	FAREWELL
1AK3	AK	COLD BAY	PORT MOLLER
AA15	AK	DILLINGHAM	SHANNONS POND
88AZ	AZ	ROOSEVELT	GRAPEVINE AIRSTRIP
NUQ	CA	MOUNTAIN VIEW	MOFFETT FEDERAL AFLD
TTS	FL	TITUSVILLE	NASA SHUTTLE LANDING FACILITY
3IS9	IL	GRAND TOWER	GRAND TOWER
53KT	KY	LIBERTY	LIBERTY-CASEY COUNTY
5KY4	KY	ELKTON	STANDARD FIELD
9KY9	KY	PAINTSVILLE	PAINTSVILLE-PRESTONSBURG-COMBS FIELD
4MN5	MN	GRACEVILLE	KAPAUN-WILSON FIELD
9MN3	MN	BARNESVILLE	BARNESVILLE MUNI
NE46	NE	GREELEY	GREELEY MUNI
OG62	OR	MYRTLE CREEK	MYRTLE CREEK MUNI
5SD3	SD	BOWDLE	BOWDLE MUNI
SD50	SD	HARROLD	HARROLD MUNI
2XA0	TX	CROWELL	FOARD COUNTY
4WI9	WI	CORNELL	CORNELL MUNI

Exhibit 26

Exhibit 12

From: Barr, Andrew D
Sent: Wednesday, January 12, 2022 2:16 AM
To: Hoque, Nazmul (DOT)
Cc: O'Connor, William V; Lingo, Lowell E. (DOT); Dubarry, Ross V (DOT)
Subject: RE: Private Airport Inquiry - Contact Information
Attachments: 2020.11.6 - FAA Letter to HTO re Future Options.pdf

Dear Mr. Hoque,

Thank you for taking my call on January 10 and for the information you provided below in your email. As we discussed, since November 2020 the Town of East Hampton has been working at the suggestion of and in conjunction with the FAA to change the status of the East Hampton Airport from a "public use" to a "private use" facility. I have attached for your records a letter received from the FAA setting forth various ways that the FAA has suggested that the Town proceed. This FAA letter has prompted several discussions between the Town and the FAA over the past 12 months regarding the future of the East Hampton Airport and the Town has conducted a lengthy public engagement period to assess each of the FAA's suggestions and guidance contained in the letter. As a result, the Town anticipates providing the FAA notice of the exact dates during which the change in status will occur by filing a Form 7480-1 in the next few weeks. The FAA is aware of this timing and has been working with the Town throughout this process.

In order to complete this status change, the Town may need to "deactivate" the airport for a short period of time to comply with FAA guidance, regulations, and processes. The FAA's letter discusses this framework under "Option 2" as a suggested way forward. The Town would shortly thereafter open a private use facility in conjunction with the FAA's guidance to ensure all safety and operational issues are addressed and the new private use airport is otherwise compliant with applicable laws and regulations. The Town does not presently anticipate changing or adding infrastructure or facilities at the airport. Key personnel would also remain the same.

Based on my review of the NYSDOT statutes and regulations as well as our discussion on Monday, my understanding is that the Town does not need to file any forms or otherwise coordinate with your office until the FAA change of status process is complete (e.g., the Form 7480-1 is filed, the status is changed, and the newly opened airport is recognized as a private airport on FAA publications, etc.). If this is correct, we'd appreciate confirmation. If this is incorrect, please let me know and direct me to the forms/processes that are required.

We appreciate your attention to this matter and will of course keep you updated as the FAA process continues. I am also available to discuss this or anything else over the phone if that would be helpful.

Respectfully,
Andrew

Andrew Barr

Cooley LLP
1144 15th Street, Suite 2300
Denver, CO 80202-2686
+1 720 566 4121 office
+1 720 566 4099 fax
abarr@cooley.com
(Pronouns: he/him)

www.cooley.com

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From: Hoque, Nazmul (DOT) <Nazmul.Hoque@dot.ny.gov>
Sent: Monday, January 10, 2022 2:17 PM
To: Barr, Andrew D <abarr@cooley.com>
Cc: O'Connor, William V <woconnor@cooley.com>; Lingo, Lowell E. (DOT) <Lowell.Lingo@dot.ny.gov>; Dubarry, Ross V (DOT) <Ross.Dubarry@dot.ny.gov>
Subject: RE: Private Airport Inquiry - Contact Information

[External]

Hi Andrew,

Thank you for contacting NYSDOT, Aviation Bureau regarding the private use airport. Required notice will be submitted on FAA Form 7480-1 form from each person who intends to change the status of an airport from private use (use by the owner or use by the owner and other person authorized by the owner) to an airport open to the public or from public-use to another status.

More Details for your information:

FAA Form 7480-1, Notice for Construction, Alteration and Deactivation of Airports:

When to File a Notice for Construction, Alteration and Deactivation of Airports

Title 14 Code of Federal Regulations Part 157 requires all persons to notify the FAA at least 90 days before construction, alteration, activation, deactivation, or change to the status or use of a civil or joint-use (civil/military) airport.*

Notice is not required for:

- 1.Establishment of a temporary airport at which operations will be conducted under visual flight rule(VFR) **and** will be used for less than 30 days with **no more than** 10 operations per day.
- 2.Intermittent use of a site that is not an established airport, which is used for less than one year **and** at which flight operations will be conducted only under VFR. (Intermittent use means the use of the site for no more than 3 days in any one week and for no more than 10 operations per day.)

*As used herein, the term "Airport" means: Any Landing or Takeoff Area, e.g. Airport, Heliport, Vertiport Gliderport, Seaplane Base, Ultralight Flightpark or Balloonport.

Required notice will be submitted on this form from each person who intends to the any of the following:

- 1.Construct or otherwise establish a new airport or activate an airport.
- 2.Construct, alter, realign, or activate any runway, or other aircraft landing or takeoff area of an airport.
- 3.Construct, alter realign, or activate a taxiway associated with a landing or takeoff area on a public-use airport.
- 4.Deactivate, discontinue using, or abandon an airport or any landing or takeoff area of an airport for a period of one year or more.
- 5.Deactivate, abandon, or discontinue using a taxiway associated with a landing or takeoff area on a public-use airport.
- 6.Change the status of an airport from private use (use by the owner or use by the owner and other person authorized by the owner)
to an airport open to the public or from public-use to another status.
- 7.Change status from IFR (Instrument Flight Rules) to VFR or VFR to IFR.
- 8.Establish or change any traffic pattern or traffic pattern altitude or direction.

Regards,

NAZMUL HOQUE, P.E.

Aviation Capital Grant Program Manager

NYS DEPARTMENT OF TRANSPORTATION

Aviation Bureau

50 Wolf Road, POD 5-4

Albany, NY 12232 | Nazmul.Hoque@dot.ny.gov

518-485-5428

Department of
Transportation

From: Barr, Andrew D <abarr@cooley.com>
Sent: Monday, January 10, 2022 11:10 AM
To: Hoque, Nazmul (DOT) <Nazmul.Hoque@dot.ny.gov>
Cc: O'Connor, William V <woconnor@cooley.com>
Subject: Private Airport Inquiry - Contact Information

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Mr. Hoque,

It was nice speaking with you this morning regarding the NYDOT requirements for the transition of a publicly owned airport from public use to private use. I will provide you with the specifics of our plan in the next few days so that you can confirm or correct what I have understood to be the NYDOT requirements. At bottom, it seems that NYDOT simply wants us to coordinate with FAA and then inform NYDOT of the transition once it has been completed.

Have a great Monday.

Best,
Andrew

Andrew Barr

Cooley LLP
1144 15th Street, Suite 2300
Denver, CO 80202-2686
+1 720 566 4121 office
+1 720 566 4099 fax
abarr@cooley.com
(Pronouns: he/him)

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U.S. Department
of Transportation
**Federal Aviation
Administration**

Eastern Region, Airport Division

1 Aviation Plaza
Jamaica, NY 11434

November 6, 2020

Peter van Scoyoc
Supervisor, Town of East Hampton
159 Pantigo Road
East Hampton, New York 11937

Subject: East Hampton Airport, East Hampton, New York

Dear Supervisor Van Scoyoc:

Due to the significant federal investment made at East Hampton Airport and the important role it serves in the State of New York, FAA is always concerned by the loss of an airport. We wanted to follow-up and further clarify the options available to the Town of East Hampton concerning the continued operation of East Hampton Airport.

As discussed, we see four options at this time. They are summarized below.

1. Negotiation of an agreement for mandatory restrictions on aircraft operators per Part 161;
2. Closure of the airport after the grant assurances expires (September 2021) and the reopening of the airport;
3. Complete closure of the airport after the grant assurances expires (September 2021); or
4. Continue to operate the airport as a public use airport.

With regards to Option 1, 49 U.S.C. Section 47524(c) states in part that "...an airport noise or access restriction on the operation of stage 3 aircraft not in effect on October 1, 1990, may become effective only if the restriction has been agreed to by the airport proprietor and all aircraft operators, or has been submitted to and approved by the Secretary of Transportation after an airport or aircraft operator's request for approval as provided by the program established under this section."

The word "or" in the excerpt is pivotal, because it highlights the fact that if the Town is able to reach an agreement with the aircraft operators, then there is no review or approval required by the FAA. Please note that new entrants who are not notified may not be subject to the restrictions.

Option 2 considers that the federal grant assurances will expire after September 26, 2021 at which time the federal obligation to keep the airport open expires. The Town can close the airport, use the remaining funds in the airport account as it desires, dispose of the land, or not. The remaining FAA obligations, such as Exclusive Rights, Revenue Use, Civil Rights, are extinguished upon closure. The Town of East Hampton can then choose to change the use of the airport from public to private use.

The Town could also re-open as a traditional public-use airport or as a private-use airport made available to others by the Town through authorized rights or by requiring prior permission. A private-use airport would not be eligible for inclusion in the NPIAS or FAA funding. The Town would still need to comply with New York State private-use airport requirements and standards.

Please note that with either scenario public or private use, the Town must still comply with the 14 CFR Part 157 (Notice of Construction, Alteration, Activation and Deactivation) requirements, airspace requirements, and safety of flight issues as well as maintaining any and all equipment used for the navigation and safety of air traffic as required by FAA policies and regulations. There may also be state and local requirements with which the Town would have to comply.

Option 3 is for the Town to close the airport completely. This would require notice pursuant to Part 157. There may also be state and local requirements with which the Town would have to comply.

In conclusion, we realize that the Town of East Hampton's decision is not simple and while the FAA encourages the preservation of airports, we realize that this is a local decision. We remain available to help answer questions. Please feel free to contact Evelyn Martinez, Manager of the New York Airports District Office at 718-995-5771 as needed.

Sincerely,

David Fish
Director, Eastern Region, Airports Division

Cc: Jennifer Solomon, Eastern Region Administrator
Maria Stanco, Eastern Region Deputy Administrator
Evelyn Martinez, Manager, NYADO
Mary M. McCarthy, Regional Counsel, Eastern and New England Regions
Jim Schultz, General Manager, NY District

Exhibit 27

Pilots Fight To Stop Plan Flight limits are under fire

BY MICHAEL WRIGHT

An East Hampton pilot says that the town's plans to limit commercial aircraft to a single flight from East Hampton Airport per day would hobble his fledgling one-aircraft charter business, and he has asked the U.S. Department of Transportation to block the town from imposing its proposed new rules.

Attorneys for Curtis Air Taxi and Jobs Lane Aviation, two small one-plane charter operations based at East Hampton Airport, asked the DOT to step in where the Federal Aviation Administration apparently will not, and derail the town's plans to close the airport briefly next month and reopen it as a technically new private airport with limitations on flights — especially commercial operations.

The administrative appeal claims that despite the process the town has worked out with the FAA to close and reopen the airport on May 19 and adopt rules that only private airports can impose, the town is still violating federal aviation laws. The petition claims that the town's plans violate the decades-old Air Noise and Capacity Act, or

*The
start-up
shuttle
service
would be
pinched.*

AIRPORT: Pilots Seek To Block Town

FROM PAGE A1

ANCA, and the Airline Deregulation Act, ADA, both of which expressly prohibit local municipalities from limiting aviation.

"The town is attempting to subvert the requirements of ANCA ... based on the faulty premise that once reopened, the airport will be a 'new' airport at which access restrictions can be imposed to make it a 'private use' facility," reads the petition to the DOT, written by attorneys Jol Silversmith and Barbara Marini of the Washington, D.C., law firm KMA Zuckert, which specializes in aviation law.

"But the town's transparent gamesmanship cannot subvert the will of Congress in adopting ANCA. The statute and implementing regulation lay out the exclusive means by which a public airport proprietor may impose noise-based and other access restriction upon aircraft; closure is not among them ... It's imperative that DOT both make clear that the town's close-and-reopen ploy does not extinguish its federal obligations and ensure that any actions taken by the town are in accordance with all applicable federal laws and regulations."

Curtis Doupe started Curtis Air Taxi last year, offering charter flights aboard his 2006 Beech Baron, a twin-engine four-seater with a range of about 1,200 miles. He said he ran about 380 flights last year, primarily between East Hampton and airports around the Northeast, carrying those commuting to Hamptons homes from Westchester and Connecticut, and for those living locally to Block Island, Nantucket or Martha's Vineyard, or ferrying kids to and from summer camps and boarding schools. He charges between \$1,200 and \$1,900 per flight.

But, he said this week, as a one-man-band, his business is dependent on being able to run multiple flights per day on the prime days, since he often may sit for days at a time without a weekday booking.

"If it were averaged out on a monthly basis, 30 trips a

month, or maybe weekly, seven trips or 10 trips a week, that might work — anything would be better than one per day, because I may have a Tuesday-Wednesday where I won't do anything, then Friday I do three or four [flights]," Doupe, 55, said. "I'm based at this airport, I've lived here for 20 years. I worked at the airport for another company, and when I left there, I invested in a plane to get this started up. I'm trying to grow my business, and this would make that basically impossible."

Doupe and his brother run Doupe Services, which gives flying lessons with two small Cessna aircraft, and the Curtis Air Taxi charter flights with the Beech Baron.

The rules the town has proposed would impose the one-flight-per-day on two categories of aircraft: commercial carriers of any kind, and aircraft that are deemed "noisy" under the town's chosen parameters of an "effective perceived noise" of 91 decibels or higher.

The 91 decibels level would capture most helicopters, jets and seaplanes regardless of their commercial status.

Doupe's plane weighs just 5,500 pounds and its twin piston engines generate less noise than the town maximum for the one flight, were it not being used for commercial purposes.

The ANCA was the foundation on which federal courts struck down an attempt by the town to impose curfews and limitations on the frequency of flights in 2015. But that was before the expiration of federal grant assurances in September 2021, which gave the town the power to close the airport permanently if it saw fit.

The attorneys for the two charter operators said the town's approach makes "a mockery" of the national aviation overarching laws.

Attorneys for the town, and town officials, have said publicly that their extensive negotiations with the FAA over the past two years led directly to the plan for the brief closure and are confident the approach will pass legal muster.

Four lawsuits have already been filed trying to stop the town's transition plans — and more are expected.

Supervisor Peter Van Scoyoc declined to comment on the most recent tactic.

Along with the limitations on flights, the town has introduced a new fee structure, putting in place fees in the hundreds of dollars for each landing of aircraft that now have to pay nothing to use the airport's runways and more than doubling the fees charged to larger aircraft that cost millions of dollars apiece and tens of thousands of dollars to fly even a short distance.

As initially proposed, Doupe's plane would have to pay \$300 per landing in East Hampton, based on its weight, even though he is based at the airport. That would mean fees in the tens of thousands of dollars each month, he said.

The proposed new fees, the pilot said, are comparable to what is charged for planes his size at major international airports like JFK, La Guardia and Logan — where high fees are used to discourage small private planes that only complicate management of a busy airport's skies.

Town officials have said that with the new limitations coming, the town's policy of not accepting FAA grants to help pay for the airport's maintenance, they need to raise fees to keep the airport self-sustaining.

But this week, members of the Town Board said they plan to revisit the proposed fee schedule, specifically for smaller planes like Doupe's.

"I play by the rules — I'm perfectly happy with the curfews, that's no big deal, and my plane is quieter than what they say is noisy," the pilot said.

"I understand the dilemma — they're trying to filter out the multiple helicopter flights per day. I'm a town resident, so it just seems like there should be a process where they can apply things differently. Residents who pay taxes can drive on the beach for free. I pay ramp tie-down fees, \$300 a month. Why can't I use the airport for free?"

Exhibit 28



Dear Neighbor:

For the last two years, the East Hampton Community Alliance ("EHCA") has engaged in a public campaign to create awareness about the economic and life-saving importance of the East Hampton Airport ("HTO"). EHCA has commissioned economic impact, environmental and diversion studies to anchor all of our communications to the facts. EHCA has reached a large amount of residents with television, print and social media ads, and has earned its reputation as an honest broker looking to meet the reasonable needs of the community while maintaining an airport in East Hampton.

Now that the East Hampton Town Board has publicly declared its intention to close HTO on May 17th and re-open with a new airport ("JPX") based upon a Prior Permission Required ("PPR") framework on May 19th, EHCA believes it needs to publicly address our concerns going forward.

EHCA submitted comments to the Town's proposed PPR regulations, which are expected to be adopted on a trial basis this summer. While EHCA has specific concerns regarding exorbitant landing fees, the proper classification of "quiet aircraft" and the disparate treatment of local pilots who are residents of East Hampton, among other things, EHCA is most concerned about the transparency of the PPR trial period and what, if any, objective standards and criteria are being used to assess the success (or lack of) of the PPR regulations.

The Town has failed to clearly articulate its stated objectives with the introduction of these new proposed regulations. In fact, the aviation community does not even know whether the trial PPR will be deployed when JPX is open on May 19th. We are in the dark.

For years, anti-airport activists have poisoned the public dialogue with half-truths and misinformation intended to obfuscate the benefits of the airport while simultaneously engaging in a fear-mongering campaign with inaccurate claims of an environmental Armageddon. The East Hampton community has embraced EHCA's fact-based analysis of the airport and rejected the lies. As the anti-airport activists continue to spread mis-information and encourage their supporters to file complaints (without yet even knowing the impact of these new PPR regulations), the East Hampton aviation community is gravely concerned that the lack of transparency with the introduction of JPX and the PPR will fail before it is even given a chance. The artificial inflation of complaints geared toward distorting the true impact of the PPR trial regulations should alarm the 80% of residents who want East Hampton to continue to have an airport.

Accordingly, EHCA is calling on the Town to establish a working group so that all legitimate interests can sit at the table, review the impact of the PPR trial regulations and help institute procedures based upon fact and not emotion. We are hopeful that the Town Board will embrace transparency as it seeks to maintain the economic vitality and life-saving impact of HTO and soon to be JPX.

Exhibit 29



March 18, 2022

Via Electronic Mail

Town Clerk Carole Brennan
159 Pantigo Road
East Hampton, NY 11937
EHAirportScope@ehamptonny.gov
cbrennan@ehamptonny.gov

RE: East Hampton Airport (HTO) – Proposed Prior Permission Required (PPR) Framework

Dear Ms. Brennan:

The Aircraft Owners and Pilots Association (AOPA), Eastern Region Helicopter Council (ERHC), Helicopter Association International (HAI), General Aviation Manufacturers Association (GAMA), National Air Transportation Association (NATA) and the National Business Aviation Association (NBAA) acknowledge the Town's efforts to find a path to preserve East Hampton Airport (HTO) and respectfully submit these comments in response to the proposals for operational restrictions that recently were discussed by the Town Board, including the presentation by the Town's external counsel, Cooley LLP, that was made at the Board's March 1 meeting ("SEQRA Study Phase and Data Collection – Proposed PPR Framework for 2022 Season").

We understand that the Town has been in communication with the Federal Aviation Administration (FAA) regarding the logistics of how the Town might close/deactivate HTO and then open a "new" airport, but that the FAA has not opined on whether doing so would necessarily provide the Town the "local control" that its external counsel has claimed would follow. It is our understanding that despite the logistically risky conversion process to allegedly private-use status, the Town would not gain the ability to implement a Prior Permission Required (PPR) program and thus would not be able to institute desired restrictions.

In its February 2, 2022 letter to the Town, the FAA cautioned that the proposition that "the Federal exclusive rights, revenue use, and civil rights obligations are extinguished by closing the airport and opening a new airport using the same location and same facilities is unsettled" – and further emphasized that the Town had declined to provide any statutory or case law in support of the proposition. We respectfully submit there is simply no authority for the notion that a paper closure of an airport "extinguishes" those obligations, and there are still other federal requirements that will clearly remain in effect, including the Airport Noise and Capacity Act of 1990 (ANCA) and FAA preemption (both statutory and implied). As a consequence, the Town would be well-advised to

suspend its consideration of all of the proposals currently under review and also to withdraw its submissions on Form 7480-1 to deactivate HTO and open a “new” airport.

We invite the Town to collaboratively work together with the aviation industry, the FAA and neighboring communities to develop solutions to address the Town’s concerns that actually can be implemented. Among other options, the Town should consider whether Subpart B of Part 161 of FAA’s regulations, which authorizes voluntary agreements between airport users and proprietors, provides an overlooked opportunity. We understand that the Town’s external counsel previously has mentioned Subpart B, but erroneously stated that such an agreement would not bind new entrants. That is not an accurate representation. Although the negotiation of a Subpart B agreement might present challenges, the Town should not be discouraged from engaging with HTO tenants and users who stand ready to engage and pursue this path which also has the support of the FAA.

We also advise caution by the Town in its of consideration of the various PPR proposals that have been put forward. For all of them, virtually no detail has been provided, and thus significant questions remain about exactly how they would be put into effect and whether they would be effective in addressing the Town’s concerns – including, but not limited to whether they would have “spillover” effects due to diversions to other airports, thus significantly impacting other communities on eastern Long Island. Generally, we strongly recommend that the Town carefully consider the feedback that is expected to be provided in this proceeding, and further engage with HTO tenants and aviation users.

Finally, faced with great capital improvement needs after decades of minimal maintenance, the airport currently requires significant investment to be maintained and operated in a safe manner. We are concerned the proposed restrictions will cause the airport to struggle to raise enough revenue to be self-sustainable.

We recognize that we are at a unique juncture, following the expiration of the grant assurances and the challenge of identifying the best path for the airport’s future given the statutory obligations and ANCA that we understand to still remain in effect. We likewise recognize the challenge of navigating the uncharted path to preserve the airport while responding to requests to reduce volume and frequency of operations. Our national and regional organizations are looking forward to engaging with the town and the FAA to seek common ground for a solution that would balance the benefits of both commerce and noise-sensitive operations.

Thank you for consideration.

Sincerely,

Aircraft Owners and Pilots Association
Eastern Region Helicopter Council
General Aviation Manufacturers Association
Helicopter Association International
National Air Transportation Association
National Business Aviation Association

Exhibit 30

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----	X	
East End Hangars, Inc., Hampton Hangars, Inc.,	:	
a/k/a Hampton Hangers, Inc., Thomas Bogdan,	:	INDEX NO. 602799/2022
Joseph Dryer, Suse Lowenstein, Lynden	:	
Restrepo, and Louise Sasso,	:	Hon. Paul J. Baisley
	:	
Petitioners,	:	
	:	
For a Judgment Under Article 78 of the CPLR	:	
	:	
-against-	:	
	:	
Town of East Hampton, New York,	:	
	:	
Respondent.	:	
	:	
-----	X	

REPLY IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS THE PETITION

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PRELIMINARY STATEMENT

As Respondent Town of East Hampton demonstrated in its Motion to Dismiss (“Motion”), this Petition should be dismissed. Petitioners do not have standing, failed to state a claim under ANCA, failed to state a claim for alleged federal violations (which, in any event, are moot), and failed to address undisputed facts regarding the Town’s engagement with NYSDOT.

ARGUMENT

I. PETITIONERS’ SEQRA CLAIM SHOULD BE DISMISSED [COUNT III]

“Plaintiffs must not only allege, but if the issue is disputed must prove, that their injury is real and different from the injury most members of the public face.” *Save the Pine Bush, Inc. v. Common Council of City of Albany*, 13 N.Y.3d 297, 306 (2009). This is because “[s]tanding requirements are not mere pleading requirements *but rather an indispensable part of the plaintiff’s case and therefore each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof.*” *Id.* (emphasis added). Petitioners have failed to show *both* that they have suffered an injury in fact and that the alleged injury falls within SEQRA’s “zone of interests.”

First, each Individual Petitioner concedes that he or she does not live near HTO. Instead, trying to meet the “injury in fact” requirement, Petitioners allege that they “live in close proximity to Montauk Airport, to which there will be significant diversion of air and vehicular traffic[.]” (Opp. 4.) Petitioners have alleged a generalized harm common to all residents of the East End—*i.e.*, alleged collateral impacts from hypothetical flight diversions. These alleged injuries are in no way unique or distinct from the purported injuries of anyone residing throughout the East End. *Matter of Long Island Contractors’ Ass’n. v Town of Riverhead*, 17 A.D.3d 590, 595 (2d Dept 2005) (finding that standing requires an injury “in some way different from that of the public at large.”). Indeed, if standing was to be permitted under Petitioners’ flight-diversion theory, then

the entire East End would have standing. That is exactly what standing requirements are intended to prevent. *Soc’y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y.2d 761, 774 (1991).

Similarly, Petitioners argue that they will be impacted by a “massive amount of traffic,” but that too is an impact felt by all people living in (or visiting) East Hampton. This type of generalized harm regarding traffic, congestion, and noise is insufficient to create standing. *Id.* at 788; see *Matter of Person v. N.Y.C. Dep’t of Transp.*, 143 A.D.3d 424, 425 (1st Dept 2016) (finding that petitioner’s allegation of increased traffic was insufficient for standing); *Peachin v. City of Oneonta*, 194 A.D.3d 1172, 1175 (3d Dep’t 2021) (“[T]heir claim relating to traffic impacts ‘fail[s] to demonstrate an environmental injury different from that suffered by the public at large.’”).

Moreover, Petitioners have not overcome the fact that their already speculative harms are moot because the FAA authorized opening of the new, private-use airport (“JPX”) only 33 hours after HTO is closed, meaning that these alleged diversions will only impact one day: Wednesday, May 18, 2022. (Supplemental Affirmation of William V. O’Connor (Supp. Aff.) ¶ 3, Ex. 8.) The flights that occur on a weekday in May are nowhere comparable to a weekend during the Season, and thus this alleged increase in flights for one day is not actionable under SEQRA. Unable to dispute this fact, Petitioners state only that the Town “overstates the limited consequence of the FAA’s no-objection airspace analysis finding.” (Opp. 8.) That is incorrect. The FAA’s airspace analyses show that it has formally approved the Town’s plan and approved JPX to open on May 19. The FAA subsequently announced this publicly in the *Federal Register*, again confirming that the Town’s plan has full FAA authorization. 87 Fed. Reg. 22617.

Second, Petitioners East End Hangars and Hampton Hangars also lack standing. As the Town raised in its Motion, the Petition was silent as to what these entities’ purported injury is. (Petition at ¶¶ 9-10.) In a futile attempt to correct this deficiency, these Petitioners cite to

paragraph 65 of the Petition, which alleges that “the existence of HTO Airport supports flora, fauna, and protects the aquifer in East Hampton, *all of which would be threatened if the HTO Airport is unable to reopen*, resulting in repurposing and likely redevelopment of the airport property.” (Opp. 11; Petition at ¶ 56.) This fails for several reasons.

As an initial matter, this statement relies on the potential inability to “reopen” HTO. However, as discussed *supra*, HTO will be permanently closing on May 17 and a new, private-use airport, JPX, will open 33 hours later. Moreover, besides being incorrect, this claim is founded on layers of conjured-up misinformation—*i.e.*, (1) flora and fauna will be threatened during the 33-hour period that has no aircraft operations, (2) the aquifer will be damaged during this same timeframe, and (3) the airport property will be repurposed and “likely” redeveloped. All of these allegations are speculative (if not outright made up) and, in fact, squarely refuted by the FAA confirming that JPX will open on May 19. This is insufficient to confer standing. *See Peachin*, 194 A.D.3d at 1174 (“Claims of environmental injury that are based on mere ‘conjecture or speculation’ will not suffice” to establish SEQRA standing). Moreover, none of these are an “injury that is in some way different from that of the public at large.” *Soc’y of Plastics Indus*, 77 N.Y.2d at 774. Accordingly, Petitioners are doing “nothing more than advancing interests shared by the public at large.” *Hassig v. N.Y. State Dep’t of Health*, 5 A.D.3d 846, 847 (3d Dep’t 2004).

Accordingly, Petitioners’ SEQRA claim should be dismissed.

II. PETITIONERS’ ANCA CLAIM SHOULD BE DISMISSED [COUNT IV]

The Town demonstrated that Petitioners’ ANCA claim must be dismissed because: (1) Petitioners do not have jurisdiction to bring this claim; (2) to the extent Petitioners’ ANCA claim is based on the closure of HTO, it fails because the statute does not apply to airport closures; and (3) to the extent Petitioners’ claim is based on the prior permission required (“PPR”) framework that will be imposed once JPX opens, it fails because ANCA does not apply to private-

use airports. Petitioners' response does nothing to change this result.¹

First, Petitioners fail to dispute that in *Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, the Second Circuit held that there is “federal equity jurisdiction” for “federal courts” to entertain a challenge claiming that state local noise and access limitations “were enacted in violation of ANCA’s procedural prerequisites.” 841 F.3d 133, 144–45 (2d Cir. 2016). Petitioners also fail to dispute that that holding flowed from Supreme Court jurisprudence recognizing “federal jurisdiction over ... injunctive-relief actions to prohibit the enforcement of state or municipal orders alleged to violate federal law.” *Id.* at 144 (citing *Ex parte Young*, 209 U.S. 123, 155–63 (1908)). There is no equivalent state equity jurisdiction and Petitioners failed to cite a single case in which a state court—in New York or otherwise—has recognized a private right of action in state court to enforce ANCA’s federal statutory obligations. If Petitioners wanted to pursue ANCA claims, they were required to do so in federal court.

Second, unable to find authority to support ANCA applying to airport closures, Petitioners declare that the “expansive definition” of “noise or access restrictions” in 14 C.F.R. § 161.3(c) satisfies their burden. (Opp. 13.) To the contrary, in drafting this “expansive definition,” the FAA could have included closure of an airport within its definition of “noise or access restrictions,” but chose not to. That is because closing an airport is not a “noise or access restriction,” it is a “deactivation” which is governed by a completely different part of the federal aviation regulations: 14 C.F.R. § 157.

¹ Petitioners’ estoppel argument is nonsense. *In re the Comm. to Stop Airport Expansion v. Wilkinson*, No. 10-41928, 2012 WL 3058626 (N.Y. Sup. Ct. July 5, 2012), did not involve the Town’s “imposition of [] restrictions,” and, by extension, did not involve the Town arguing that ANCA applied to “such restrictions.” (Opp. 15.) To the contrary, the court simply noted that the Town’s metric for measuring noise impacts was “set forth in the regulations issued pursuant to [the Aviation Safety and Noise Abatement Act] and ANCA.” *Wilkinson*, 2012 WL 3058626.

Petitioners' attempt to sidestep the FAA's November 2020 letter similarly fails. Contrary to Petitioners' mischaracterization, the Town is not relying on its attorney's "expert" opinion—it is relying on the plain language of an FAA letter authored by the Director of Airports for the FAA's Eastern Regions (who is certainly an expert when it comes to technical FAA processes such as deactivation of an airport). In that letter, the FAA expressly stated that the Town would need to comply with ANCA if it attempted "Option 1" (negotiating mandatory restrictions for aircraft operations pursuant to 14 C.F.R §§ 161, *et seq.*) but included no such requirement for Option 2 (closing HTO and opening JPX). (O'Connor Aff. ¶¶ 3, Ex. 1.) The FAA has never suggested that a deactivation triggers ANCA. For good reason: it doesn't.

Petitioners' efforts to overcome the fact that numerous previously federally obligated airports have permanently closed since ANCA was enacted without complying with ANCA fail for several reasons. Petitioners begin by proclaiming, without support, that "just because the FAA seemingly did not raise ANCA in the context of those closures does not mean that ANCA did not apply *or that the subject municipalities did not comply with ANCA.*" (Opp. 14.) But it is undisputed that no airport sponsor has ever successfully established a restriction pursuant to ANCA. None. Petitioners' own statement proves why they are wrong. Put simply, if ANCA applied to airport closures, no previously obligated airport could have closed since 1990.

Next, Petitioners try to distinguish the closure of HTO from the closure of other previously obligated efforts by claiming that "the Town seeks to close (and reopen) the HTO Airport *because* of noise complaints." (*Id.*) Besides mischaracterizing the facts—HTO is permanently closing and JPX is a new airport opening 33 hours later—Petitioners provide no authority whatsoever for their suggestion that ANCA applies to a private-use airport if the sponsor is trying to implement reasonable restrictions on aircraft noise. Nor could they. Petitioners miss the mark when arguing

that “it is also irrelevant whether the airports the Town cited *were federal obligated at the time they closed.*” (*Id.*) As the Town made clear, these airports were, just like HTO, “once federally obligated” or “previously federally obligated”—the Town did not state that they were obligated at the time of closure. (Motion at 7.)

Third, Petitioners fail to explain how ANCA could apply to a private-use airport like JPX. Petitioners incorrectly claim that *Friends of the East Hampton Airport* was referring to any public entity that is a proprietor of an airport (public-use or private-use) when it stated that “ANCA applies to ‘public airport proprietors.’” (Opp. 15.) To the contrary, it is clear that the Second Circuit used the phrase “public airport proprietors” to refer to proprietors of public-use airports. Application of these alternate interpretations confirms this point. Under Petitioners’ proffered (and incorrect) interpretation, privately owned, public-use airports, such as Montauk Airport, would not be subject to ANCA—despite being grant obligated and the recipient of federal funds—because they are not owned by a public entity.² Similarly, according to Petitioners, any airport owned by a public entity would be subject to ANCA even if it had never accepted federal funding. Nonsense. Under the correct interpretation (*i.e.*, ANCA only applies to proprietors of federal-fund-recipient public-use airports), every grant obligated airport would be subject to ANCA and airports that had not taken federal funds—like JPX—would not be. In short, the Second Circuit found that ANCA only applies to public-use airports, which JPX will *not* be when it opens.

This is supported by the FAA’s suggestion, in the November 2020 letter, that the Town open a private-use airport subject to a PPR framework. (O’Connor Aff. ¶¶ 3, Ex. 1.) ANCA

² Any sponsor, public or private, who accepts federal funds is required to “make the airport available as an airport for public use on reasonable terms and without unjust discrimination.” FAA Grant Assurance 22(a). This prevents a grant obligated airport from restricting access to the public, confirming that the Second Circuit’s discussion of “public airports” refers to public-use airports, not airports sponsored by public entities.

prohibits a sponsor of a *public-use* airport from implementing noise or access restrictions on certain aircraft unless ANCA's procedural requirements are met. A PPR framework expressly contemplates restrictions on *all* aircraft, including those covered by ANCA. PPR frameworks are thus generally incompatible with ANCA as ANCA does not permit restrictions and PPR frameworks are premised on restrictions. Put simply, Petitioners' argument is entirely contradicted by the fact that the FAA has not only noted that private-use airports may adopt "prior permission [] required" frameworks, but expressly authorized the Town to open JPX as a "private-use airport" that "require[s] prior permission." (O'Connor Aff. ¶¶ 3, 5, Ex. 1.) Indeed, in an FAA Advisory Circular, the FAA expressly states that:

The owners of public-use airports cannot impose operational restrictions on the use of the airport. ***Restrictions such as "prior permission required" or "use at your own risk" or "contact the airport manager prior to landing" are not permissible at public-use airports.*** [On the other hand,] a private-use airport is an airport available for use by the owner only or by the owner and other persons authorized by the owner only. Therefore, the ***owners of private-use airports do not have to reiterate*** in a remark in data element 110 that the airport is private use or ***that prior permission is required.***

FAA, Advisory Circular 150/5200-35A (Sept. 23, 2010), <https://bit.ly/3Discq1> (emphases added).

Under Petitioners' view, this statement (and many others like it) from the FAA would be wrong and the more than 14,400 private use-airports across the country operating a PPR framework run afoul of ANCA. That of course is not true.

Moreover, 14 C.F.R. § 157.2 shows that the primary distinction between a "private use" and "public use" airport is that the former can limit if and when to grant access to third parties. Compare 14 C.F.R. § 157.2 ("*Private use* means available for use by the owner only or by the owner and other persons authorized by the owner.") with ("*Public use* means available for use by the general public without a requirement for prior approval of the owner or operator."). If ANCA applied to private airports, then this distinction would disappear as a PPR framework is, by

definition, the principal difference between private-use and public-use airports.

III. PETITIONERS' FAA REGULATORY AND AIRPORT CAPABILITY CLAIMS SHOULD BE DISMISSED [COUNTS I AND II]

Petitioners' claims related to the Town's compliance with certain FAA regulations must be dismissed because: (1) these claims are moot; (2) Petitioners do not have a private right of action to bring these claims; and (3) this Court does not have jurisdiction to resolve these claims because the FAA has primary jurisdiction.

With respect to the first basis for dismissal, Petitioners' FAA regulatory and capability claims are moot because the FAA has already completed its airspace analyses and, in doing so, has approved the Town's plan and confirmed that JPX will be safe and capable upon opening on May 19, 2022. (O'Connor Aff. ¶¶ 13, 15, Exs. 5-7.) In fact, on April 22, 2022, the FAA formally approved the Town's special instrument procedure application meaning that JPX will have *all* safety and operational capabilities available upon opening on May 19. (Supp. Aff. ¶ 5, Ex. 10.) The FAA has also confirmed, including in an official notice in the *Federal Register* as well as correspondence with the Town, that HTO will deactivate on May 17 and JPX will activate on May 19. (*Id.* ¶ 3, Ex. 8; O'Connor Aff. ¶ 13 Exs. 5-6.)

In an attempt to overcome this insurmountable hurdle, Petitioners claim *without any support* that the Town "woefully overstate[s] the limited no-objection findings in the March 18, 2022 notice and issuance of a three-letter identifier on March 24, 2022." (Opp. 20.) To the contrary, the FAA's completion of its airspace analyses shows that it has formally approved this process and the Town's plan because, upon making a "no objection" finding to a request to activate a new airport (like JPX), the FAA is stating that the opening may occur on the date requested, here May 19. (Supp. Aff. ¶ 3, Ex. 8.) Put simply, it is indisputable that every purported "issue" raised by Petitioners has been complied with, including: (1) the FAA completed its airspace analyses;

(2) the FAA officially approved the special instrument procedures for JPX and they will be available for use on May 19; (3) all navigational, weather, and communications aids will be available for use upon opening; (4) a Letter of Agreement with New York TRACON for air traffic control services has been established; and (5) the FAA has certified JPX's air traffic controllers and delegated airspace to the Town. (Supp. Aff. ¶ 6.)

With respect to the second basis for dismissal, Petitioners do not dispute the fact that “neither the [FAA] Act nor the [federal aviation] regulations create implied private rights of action.” *Bonano v. E. Caribbean Airline Corp.*, 365 F.3d 81, 86 (1st Cir. 2004); *Montauk-Caribbean Airways, Inc. v. Hope*, 784 F.2d 91, 97 (2d Cir. 1986); *Paskar v. City of N.Y.*, 3 F. Supp. 3d 129, 136 (S.D.N.Y. 2014) (“[T]he Federal Aviation Act does not create a private right of action, either explicitly or implicitly.”). Instead, Petitioners claim that they “are not bringing an action in federal court under 14 C.F.R. § 157.5.” (Opp. 16.) Petitioners miss the point because, in addition to challenging the Town's compliance with 14 C.F.R. § 157.5, they are challenging the Town's compliance with federal regulations. Accordingly, to the extent Petitioners wanted to pursue these claims, they were required to do so in FAA administrative proceedings.

Finally, Petitioners fail to explain why these claims are not best addressed in the first instance by the FAA—nor can they—as the FAA itself stated it “is working closely with the town of East Hampton so all federal regulations are followed to ensure the safety of the airspace.” (Supp. Aff. ¶ 7, Ex. 11.) Petitioners attempts to overcome this fail. *First*, while Petitioners concede that the Part 16 (and Part 13) process covers at least some of their claims, they argue that they were not required to complete this administrative process because Part 16 is inconvenient. (*See* Opp. 18.) Petitioners cannot ignore the FAA's primary jurisdiction simply because they would prefer to litigate in this court. The Part 16 process is intended for challenges to airport sponsor action

vis-à-vis the federal aviation regulations and that is exactly what Petitioners are doing here. As a result, Petitioners were required to file a formal action with the FAA and request that the FAA intervene. Indeed, the FAA and DOT are *already reviewing* the ANCA claim, further confirming primary jurisdiction. (FAA Docket No. 16-22-05; DOT Docket No. DOT-OST-2022-0043.) Petitioners cannot be permitted to sidestep this requirement in hopes that a court would issue an inconsistent ruling.

Second, Petitioners' waste time pointing out that the Town's Motion cited federal primary jurisdiction cases as opposed to state cases suggesting that it somehow negates the FAA's primary jurisdiction. (Opp. 19.) Of course, the standard is the same under state and federal law, and both support the conclusion that these claims should be addressed by the FAA in the first instance. *Matter of Neumann v. Wyandanch Union Free Sch. Dist.*, 84 A.D.3d 816, 818 (2d Dep't 2011) (stating under New York law, "primary jurisdiction provides that where the courts and an administrative agency have concurrent jurisdiction over a dispute involving issues beyond the conventional experience of judges ... ***the court will stay its hand until the agency has applied its expertise to the salient questions.***").

Third, that the FAA administrative processes do not address all of Petitioners' claims is wholly irrelevant and does not defeat the FAA's primary jurisdiction over these specific claims. The Town has never claimed that the FAA has primary jurisdiction over this entire action (*i.e.*, the SEQRA claim)—rather, the FAA has primary jurisdiction over Petitioners' FAA regulatory and associated airport capability claims.³

³ The FAA has already decided that "[t]he Town can close the airport" and "use the remaining funds in the airport account as it desires." (O'Connor Aff. ¶ 5, Ex. 1.) The FAA's interpretation is entitled to deference. See *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984). Nevertheless, the Town does not currently have plans to use airport funds for anything other than the airport.

Fourth, Petitioners impermissibly conflate primary jurisdiction and exhaustion of administrative remedies in claiming that there are “exceptions to the general rule of exhaustion of administrative remedies.” (Opp. 18.) Although related, these doctrines are not interchangeable, and Petitioners failed to cite any authority providing that exceptions to one apply to the other.

Finally, in a last-ditch effort, Petitioners ask this Court to “exercise concurrent jurisdiction” with the FAA. (Opp. 20.) Petitioners’ invitation to this Court to overrule the FAA is exactly what the primary jurisdiction doctrine is intended to prevent—inconsistent rulings between the agency charged with particular regulatory duties and the courts. *See Ellis v. Tribune Television Co.*, 443 F.3d 71, 88 (2d Cir. 2006) (“[T]he Supreme Court has made clear that district courts should not issue injunctive relief while a decision over which the [agency] has exclusive authority is pending”); *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. Of Trade*, 412 U.S. 800, 821 (1973) (“The fact that issuing an injunction may undercut the policies served by the doctrine of primary jurisdiction is therefore an important element to be considered.”) The FAA not only suggested the path that the Town ultimately adopted (O’Connor Aff. ¶ 3, Ex. 1) but has already issued its formal approval of the Town’s plan to deactivate HTO on May 17, 2022 and open JPX on May 19, 2022. (*Id.* at ¶¶ 13, 15, Exs. 5-7.) Petitioners are asking this Court to overrule the agency entrusted with protecting the national airspace system in direct contravention of the primary jurisdiction doctrine.

In sum, this Court should dismiss these claims because they are moot, primary jurisdiction rests with the FAA, and Petitioners do not have a private right of action to bring these claims in this court.

IV. PETITIONERS’ NYSDOT CLAIM SHOULD BE DISMISSED [COUNT II]

Petitioners’ argument that the Town violated 14-h.3 of the New York State Transportation Law and New York State General Business Law, Article 14, Section 249, similarly fails. *First*,

Petitioners claim, without support, that “[t]here is at least a viable question as to whether the Town is ‘dispos[ing] of’ or ‘otherwise [transferring]’ its interest in HTO by converting to a private-use facility, which is unlikely to have instrument flight procedures in place—potentially a ‘principal function aviation operation[] or support.’” (Opp. 21.) Besides the fact that the Town is not “disposing” or “otherwise transferring” its interest in HTO, this argument is moot because on April 22, 2022, the FAA officially approved the special instrument procedures for JPX and confirmed that they will be available immediately upon the opening of JPX. (Supp. Aff. ¶ 5, Ex. 10.)

Second, Petitioners claim (again, without support) that “while GBL § 249 references ‘privately-owned’ airports, the Town’s situation—a publicly owned, private-use airport—is novel and may fall within the intended ambit of the statute.” (Opp. at p. 21.) Simply put, a **publicly** owned airport by definition is not a **privately** owned airport making § 249 inapplicable. But even if § 249 did apply, the Town complied with it. The entire thrust of § 249 is to further the “authority for municipalities” to—subject to any “reasonable conditions” from NYSDOT—oversee the creation of privately owned airports. N.Y.G.B.L. §§ 249.1, 249.3. Here, the Town contacted NYSDOT before notifying the FAA of its intent to deactivate HTO and squarely asked NYSDOT how the Town should proceed. NYSDOT instructed the Town to submit Form 7480-1s, cooperate with all FAA requests, and keep NYSDOT apprised of progress—that is what the Town has done. (Supp. Aff. ¶ 10, Exs. 12-19.) NYSDOT correctly recognized that the Town and FAA are working together to deactivate HTO and activate JPX, it imposed a “reasonable condition[]” that the Town coordinate closely with the FAA in resolving the complex regulatory issues at play, and asked to be kept updated on progress. *See* § 249.1. NYSDOT has repeatedly confirmed that nothing further is required, and Petitioners fail to explain why NYSDOT’s approach is unreasonable. Therefore, even assuming that section 249 applies—which it does not—the Town did not act arbitrarily and

capriciously.

CONCLUSION

The Town respectfully requests that the Court grant its motion to dismiss and dismiss the Petition.

Dated: May 2, 2022
New York, New York

Respectfully submitted,

COOLEY LLP

By: /s/ Philip M. Bowman
Philip M. Bowman, Esq.
55 Hudson Yards
New York, New York 10001
Phone: (212) 479-6000
pbowman@cooley.com

William V. O'Connor, Esq.*
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
Phone: (858) 550-6000
Fax: (858) 550-6420
woconnor@cooley.com

Andrew D. Barr, Esq.*
Cooley LLP
1144 15th Street, Suite 2300
Denver, CO 80202
Phone: (720) 566-4000
Fax: (720) 566-4099
abarr@cooley.com

Adam M. Katz, Esq.
Cooley LLP
500 Boylston St.,
Boston, MA 02116
Phone: (617) 937-2300
Fax: (617) 937-2400
akatz@cooley.com

Dan Ruzow
druzow@woh.com
John Henry
jhenry@woh.com
Christopher McDonald
cmcdonald@woh.com

WHITEMAN OSTERMAN & HANNA LLP
One Commerce Plaza, 19th Floor

Albany, NY 12260

Nicholas Rigano
538 Broadhollow Rd
Melville, NY 11747
Phone: (631) 756-5900
nrigano@riganollc.com

Rigano LLC

**pro hac vice admission*

*Attorneys for Respondent Town of East
Hampton, New York*

TO: (via NYSCEF)

James M. Catterson
james.catterson@pillsburylaw.com
Brianna Walsh
brianna.walsh@pillsburylaw.com
Danielle Stefanucci
danielle.stefanucci@pillsburylaw.com
John Van Son
John.vanson@pillsburylaw.com
**PILLSBURY WINTHROP SHAW
PITTMAN LLP**
31 W. 52nd Street
New York, NY 10019-6118

*Attorneys for Petitioners East End Hangars,
Inc., Hampton Hangars, Inc., a/k/a Hampton
Hangars, Inc.*

Riyaz Bhimani
rbhimani@eckertseamans.com
**ECKERT SEAMANS CHERIN &
MELLOTT LLC**
10 Bank Street, #700
White Plains, NY 10606

*Attorney for Petitioners Thomas Bogdan,
Joseph Dryer, Suse Lowenstein, Lynden
Restrepo, and Louise Sasso*

CERTIFICATION OF COMPLIANCE WITH UNIFORM CIVIL RULE 202.8-b(b)

I hereby certify the foregoing Reply in Support of Respondent's Motion to Dismiss the Petition exclusive of caption, table of contents, table of authorities, and signature block comprises of 4161 words, and the complies with the Uniform Civil Rule 202.8-b(b).

Dated: May 2, 2022
New York, New York

Respectfully submitted,

COOLEY LLP

By: /s/ Philip M. Bowman
Philip M. Bowman, Esq.
55 Hudson Yards
New York, New York 10001
Phone: (212) 479-6000
pbowman@cooley.com

William V. O'Connor, Esq.*
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
Phone: (858) 550-6000
Fax: (858) 550-6420
woconnor@cooley.com

Andrew D. Barr, Esq.*
Cooley LLP
1144 15th Street, Suite 2300
Denver, CO 80202
Phone: (720) 566-4000
Fax: (720) 566-4099
abarr@cooley.com

Adam M. Katz, Esq.
Cooley LLP
500 Boylston St.,
Boston, MA 02116
Phone: (617) 937-2300
Fax: (617) 937-2400
akatz@cooley.com

Dan Ruzow

druzow@woh.com

John Henry

jhenry@woh.com

Christopher McDonald

cmcdonald@woh.com

**WHITEMAN OSTERMAN & HANNA
LLP**

One Commerce Plaza, 19th Floor
Albany, NY 12260

Nicholas Rigano

538 Broadhollow Rd

Melville, NY 11747

Phone: (631) 756-5900

nrigano@riganollc.com

Rigano LLC

**pro hac vice admission*

*Attorneys for Respondent Town of East
Hampton, New York*

Exhibit 31

----- :
The Coalition to Keep East Hampton Airport :
Open, Ltd., Andrew Sabin, Michael Mancuso, :
Edmond Chakmakian, Kelly Bloss, Jennifer Faga, :
Robert Aspenleiter, Thomas Griffin, Douglas :
Donaldson, Harry Ellis, and Dr. George :
Dempsey, :

For a Judgment Under Article 78 of the CPLR

-against-

Town of East Hampton, New York,

Respondent.

X

INDEX NO. 602801/2022

Hon. David T. Reilly

REPLY IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS THE PETITION

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PRELIMINARY STATEMENT

This Petition should be dismissed. Petitioners do not have standing, they failed to state a claim under ANCA, they failed to state a claim for alleged federal violations (which, in any event, are moot), and they failed to engage with undisputed facts regarding the Town's engagement with NYSDOT.

ARGUMENT

I. PETITIONERS' SEQRA CLAIM SHOULD BE DISMISSED [COUNT I]

To demonstrate standing, Petitioners must show *both* that they have suffered an injury in fact and that the alleged injury falls within the "zone of interests" protected by SEQRA. Petitioners failed to satisfy this requirement.

First, Petitioners Sabin, Chakmakian and Dempsey seemingly admit that they do not have standing. As made clear in the Town's Motion, the allegation that Petitioner Chakmakian's clients and Petitioner Dempsey's patients will no longer be able to be evacuated from East Hampton to nearby trauma centers is insufficient for standing purposes because it fails to establish an injury different and distinct from the general public. (Petition ¶¶ 11, 19); *see Hassig v. N.Y. State Dep't of Health*, 5 A.D.3d 846, 847 (3d Dep't 2004) (finding no standing where "petitioner [wa]s doing nothing more than advancing interests shared by the public at large"). Petitioners deliberately failed to respond to this issue raised in the Town's motion and have waived any response to these arguments and thus "conceded" that they do not have standing. *See Weldon v. Rivera*, 301 A.D.2d 934, 935 (3d Dep't 2003) (granting motion to dismiss where plaintiff "failed to address this argument in her brief, other than a scant reference" and "apparently has conceded [defendant]'s argument").

Similarly, the Motion highlighted that Petitioner Sabin failed to satisfy the "zone of interests" requirement because his alleged injury is solely economic in nature. (Petition ¶ 10 ("He

and his business will be adversely impacted by the closure of the Airport.”.) In order to have SEQRA standing, “[t]he injury must be ‘environmental and not solely economic in nature.’” *Peachin v. City of Oneonta*, 194 A.D.3d 1172, 1174 (3d Dep’t 2021). Petitioner Sabin failed to oppose this argument and waived the ability to respond. *See Weldon*, 301 A.D.2d at 935.

Second, with respect to the remaining individual Petitioners, they concede that none of them live near HTO. (Opp. 3 (“Petitioners are not relying on their proximity to HTO Airport to show that they will suffer a direct harm different from the public at large.”).) Instead, Petitioners try to meet the “injury in fact” requirement by alleging that a handful of them live near “*other area airports* and/or their flight paths” and that “they will suffer environmental harms (increased noise, air and traffic impacts)” in the event flights are diverted. (*Id.* 3, 6.) Put differently, Petitioners have alleged a generalized harm common to all residents of the East End—*i.e.*, alleged collateral impacts from hypothetical flight diversions. These alleged injuries are in no way unique or distinct from the purported injuries of anyone residing throughout the East End. *Matter of Long Island Contractors’ Ass’n. v. Town of Riverhead*, 17 A.D.3d 590, 595 (2d Dept 2005) (finding that standing requires an injury “in some way different from that of the public at large”). Indeed, if standing was to be permitted under Petitioners’ flight-diversion theory, then the entire East End would have standing. That is exactly what standing requirements are intended to prevent. *Soc’y of Plastics Indus., Inc. v. Cnty. of Suffolk*, 77 N.Y.2d 761, 774 (1991).

Similarly, Petitioners claim that they may suffer “increased noise, air, and traffic impacts,” but that too is an impact felt by all people living in (or visiting) East Hampton. This type of generalized harm regarding traffic, congestion, and noise is exactly what courts have made clear is insufficient to create standing. *Id.* at 788; *see Matter of Person v. N.Y.C. Dep’t. of Transp.*, 143 A.D.3d 424, 425 (1st Dept 2016) (finding that petitioner’s allegation of increased traffic was

insufficient for standing); *Peachin*, 194 A.D.3d at 1175 (“[T]heir claim relating to traffic impacts ‘fail[s] to demonstrate an environmental injury different from that suffered by the public at large.’”).

Third, Petitioner Coalition’s attempt to satisfy its burden of establishing organizational standing based on its “rapid formation and retention of counsel” is insufficient to establish standing. (Opp. 7.) Simply creating a previously non-existent group and hiring a lawyer for the purpose of challenging an action cannot—and should not—overcome the standing requirements. To the contrary, Petitioners’ own characterization of their “coalition” and its formation belies the point that it is not “the proper party to seek redress for that injury” and that standing would be improper. *Soc’y of Plastics Indus.*, 77 N.Y.2d at 775.

Accordingly, Petitioners’ SEQRA claim should be dismissed.

II. PETITIONERS’ ANCA CLAIM SHOULD BE DISMISSED [COUNT IV]

The Town’s Motion demonstrated that Petitioners’ ANCA claim must be dismissed because: (1) Petitioners do not have jurisdiction to bring this claim; (2) to the extent Petitioners’ ANCA claim is based on the closure of HTO, it fails because the statute does not apply to airport closures; and (3) to the extent this is based on the trial prior permission required (“PPR”) framework that will govern JPX, it fails because ANCA does not apply to private-use airports.

First, Petitioners fail to dispute that in *Friends of the East Hampton Airport, Inc. v. Town of East Hampton*, the Second Circuit held that there is “federal equity jurisdiction” for “federal courts” to entertain a challenge claiming that state local noise and access limitations “were enacted in violation of ANCA’s procedural prerequisites.” 841 F.3d 133, 144–45 (2d Cir. 2016). Petitioners also fail to dispute that that holding flowed from Supreme Court jurisprudence recognizing “federal jurisdiction over ... injunctive-relief actions to prohibit the enforcement of state or municipal orders alleged to violate federal law.” *Id.* at 144 (citing *Ex parte Young*, 209

U.S. 123, 155–63 (1908)). There is no equivalent state equity jurisdiction and Petitioners failed to cite a single case in which a state court—in New York or otherwise—has recognized a private right of action in state court to enforce ANCA’s federal statutory obligations. If Petitioners wanted to pursue ANCA claims, they were required to do so in federal court.

Instead of responding to this issue, Petitioners claim that the Town’s “standing argument” fails because “the Town itself was a party” to an action where a state court “evaluated whether a town has complied with ANCA’s requirements” and, therefore, the Town is judicially estopped from making this argument. (Opp. 10.) Setting aside that this jurisdictional challenge is not a “standing argument,” Petitioners misrepresent *In re the Committee to Stop Airport Expansion v. Wilkinson*, No. 10-41928, 2012 WL 3058626 (N.Y. Sup. Ct. July 05, 2012), as the court in that case did *not* evaluate whether the Town complied with ANCA. To the contrary, the court simply noted that the Town’s metric for measuring noise impacts was “set forth in the regulations issued pursuant to [the Aviation Safety and Noise Abatement Act] and ANCA.” *Id.* That is it.

Second, Petitioners’ attempt to convince this court that ANCA applies to airport closures is similarly unavailing.¹ Unable to find any authority for its position, Petitioners declare that the *Town* claims that segmenting the closure of HTO and the opening of JPX “magically allow[s] it to avoid” ANCA. (Opp. 8.) Petitioners conveniently ignore the undisputed fact that the FAA—not the Town—first suggested and subsequently approved this path. (*See* Affirmation of William V. O’Connor (“O’Connor Aff.”), ¶ 15, Ex. 7.) And there is no “magic”—JPX will be a private-use airport and, like all private-use airports, it will not be subject to ANCA. *See infra*.

¹ The Town provided a list of examples of airports that were once federally obligated and then closed without ANCA incident, demonstrating that ANCA does not apply to airport closures. (*See* Motion at 8, n. 2.) Petitioners failed to refute this fact and instead claim that it is “highly debatable.” (Opp. 9.) Setting aside that this is not debatable at all, Petitioners have “conceded” this point by failing to respond. *See Weldon*, 301 A.D.2d at 935.

Equally unconvincing is Petitioners' baseless claim that "this is not consistent with the requirements or intent of the statute[.]" (Opp. 9.) To the contrary, in drafting 14 C.F.R. § 161.3(c), the FAA could have included closure of an airport within its definition of "noise or access restrictions," but chose not to. That is because closing an airport is not a "noise or access restriction," it is a "deactivation" which is governed by a completely different part of the federal aviation regulations: 14 C.F.R. § 157.

Petitioners' unsupported claim that "[i]t would be perverse outcome to allow a party to temporarily close a public airport, and then to be able to use that status to avoid the carefully constructed national air noise policy," demonstrates Petitioners' attempt to misrepresent what is actually happening. The Town is not "temporarily" closing HTO—HTO is closing permanently. *See Federal Register*, 87 Fed. Reg. 22617. An entirely new private-use airport—JPX—is opening shortly thereafter. *Id.* The closure of HTO is not legal fiction, despite Petitioners' attempts to construe it as such. Indeed, the FAA has made clear that the deactivation of HTO and the activation of JPX are regulatorily distinct processes that requires *all* services and facilities at HTO to be independently decommissioned and, separately, all services and facilities at JPX to be commissioned consistent with a private-use airport. (Supplemental Affirmation of William V. O'Connor (Supp. Aff.) ¶ 3, Ex. 8); O'Connor Aff. ¶ 13 Exs. 5-6.) This several-months-long process to effectuate the closure of HTO and the opening of JPX involved significant efforts by FAA and Town personnel to ensure that all safety and operational capabilities available at HTO would be available at JPX upon opening on May 19, 2022.

Third, and even more unconvincing, is Petitioners' attempts to dispute the fact that ANCA does not—and logically could not—apply to private-use airports. ANCA prohibits a sponsor of a *public-use* airport from implementing noise or access restrictions on certain aircraft unless

ANCA's procedural requirements are met. A PPR framework expressly contemplates restrictions on *all* aircraft, including those covered by ANCA. PPR frameworks are thus generally incompatible with ANCA as ANCA does not permit restrictions and PPR frameworks are premised on restrictions. Put simply, Petitioners' argument is entirely contradicted by the fact that the FAA has not only noted that private-use airports may adopt "prior permission [] required" frameworks, but expressly authorized the Town to open JPX as a "private-use airport" that "require[s] prior permission." (O'Connor Aff. ¶¶ 3, 5, Ex. 1.) Indeed, in an FAA Advisory Circular, the FAA expressly states that:

The owners of public-use airports cannot impose operational restrictions on the use of the airport. ***Restrictions such as "prior permission required" or "use at your own risk" or "contact the airport manager prior to landing" are not permissible at public-use airports.*** [On the other hand,] a private-use airport is an airport available for use by the owner only or by the owner and other persons authorized by the owner only. Therefore, the ***owners of private-use airports do not have to reiterate*** in a remark in data element 110 that the airport is private use or ***that prior permission is required.***

FAA, Advisory Circular 150/5200-35A (Sept. 23, 2010), <https://bit.ly/3Discq1> (emphases added).

Under Petitioners' view, this statement (and many others like it) from the FAA would be wrong and the more than 14,400 private use-airports across the country operating a PPR framework run afoul of ANCA.² That of course is not true.

Moreover, 14 C.F.R. § 157.2 makes clear that the primary distinction between a "private use" and "public use" airport is that the former can limit if and when to grant access to third parties. *Compare* 14 C.F.R. § 157.2 ("*Private use* means available for use by the owner only or by the owner and other persons authorized by the owner.") *with* ("*Public use* means available for use by

² The FAA provided the Town with a list of publicly owned, private-use airports that were previously grant obligated, the majority of which expressly operate pursuant to a PPR framework. (Supp. Aff. ¶ 12, Ex. 21.) None of these airports have been accused of violating ANCA.

the general public without a requirement for prior approval of the owner or operator.”). If ANCA applied to private airports, then this distinction would disappear as a PPR framework is, by definition, the difference between private-use and public-use airports.

Petitioners also incorrectly claim that *Friends of the East Hampton Airport* was referring to any public entity that is a proprietor of an airport (public-use or private-use) when it stated that “ANCA applies to ‘public airport proprietors.’” (Opp. 9.) To the contrary, it is clear that the Second Circuit used the phrase “public airport proprietors” to refer to proprietors of public-use airports. Application of these alternate interpretations confirms this point. Under Petitioners’ proffered (and incorrect) interpretation, privately owned, public-use airports, such as Montauk Airport, would not be subject to ANCA—despite being grant obligated and the recipient of federal funds—because they are not owned by a public entity.³ Similarly, according to Petitioners, any airport owned by a public entity would be subject to ANCA even if it had never accepted federal funding. Nonsense. Under the correct interpretation (*i.e.*, ANCA only applies to proprietors of federal-fund-recipient public-use airports), every grant obligated airport would be subject to ANCA and airports that had not taken federal funds—like JPX—would not be. In short, the Second Circuit found that ANCA only applies to public-use airports, which JPX will *not* be when it opens.

Petitioners’ attempt to draw a distinction by claiming that this is the first publicly owned, private-use airport is flatly wrong. Petitioners, along with anyone else, can quickly look up FAA-

³ Any sponsor, public or private, who accepts federal funds is required to “make the airport available as an airport for public use on reasonable terms and without unjust discrimination.” FAA Grant Assurance 22(a). This prevents a grant obligated airport from restricting access to the public, confirming that the Second Circuit’s discussion of “public airports” refers to public-use airports, not airports sponsored by public entities.

provided information stating that there are more than 700 publicly owned, private-use airports.⁴ (Supp. Aff. ¶¶ 11-12, Exs. 20-21.) Almost all of these airports operate a PPR framework and *none* have been found to violate ANCA.

Lastly, contrary to Petitioners' assertion, while the FAA is not a party to this lawsuit, it has certainly not been silent. Among other things, the FAA (1) recommended in its November 2020 letter that the Town deactivate HTO, activate a new private-use airport, and then institute a PPR framework (Supp. Aff. ¶ 8; O'Connor Aff. ¶ 5, Ex. 2); (2) formally approved the Town's plan to close HTO (*id.* at ¶ 13, Exs. 5-6); (3) formally approved the Town's plan to open JPX (*id.* at ¶ 15, Ex. 7); (4) certified and approved numerous other requirements for JPX to operate; and (5) has reviewed the Town's draft and final PPR framework with no objection. The FAA's participation speaks volumes.

III. PETITIONERS' FAA REGULATORY AND AIRPORT CAPABILITY CLAIMS SHOULD BE DISMISSED [COUNTS II AND V]

Petitioners' claims related to the Town's compliance with certain FAA regulations and processes must be dismissed because: (1) these claims are moot; (2) Petitioners do not have a private right of action to bring these claims; and (3) this Court does not have jurisdiction to resolve these claims because the FAA has primary jurisdiction

With respect to the first basis for dismissal, Petitioners' FAA regulatory and capability claims are moot because the FAA has already completed its airspace analyses and, in doing so, has approved the Town's plan and confirmed that JPX will be safe and capable upon opening on May 19, 2022. (O'Connor Aff. ¶¶ 13, 15, Exs. 5-7.) Indeed, on April 22, 2022, the FAA formally

⁴ In May 2020, the FAA's Director of Airport Policy (ARP-3) provided the Town with a comprehensive list of publicly owned, private use airports. (O'Connor Affirmation, Exs. 20-21.) Notably, this list was prepared by the FAA for the sole purpose of demonstrating that the Town could sponsor a private-use airport, which by definition, requires an operator to obtain prior permission from the Town in order to use it. (O'Connor Aff. ¶¶ 11-12.)

approved the Town's special instrument procedure application meaning that JPX will have *all* safety and operational capabilities available upon opening on May 19. (Supp. Aff. ¶ 5, Ex. 10.) The FAA has also confirmed, including in an official notice in the *Federal Register* as well as correspondence with the Town, that HTO will deactivate on May 17 and JPX will activate on May 19. (Supp. Aff. ¶ 3, Ex. 8; O'Connor Aff. ¶ 13 Exs. 5-6.)

In an attempt to overcome this insurmountable hurdle, Petitioners claim *without any support* "that although the FAA has completed its airspace analysis and issued no objections if certain conditions are met, they have issued no formal approval over the process or stated that the Town has met all of its requirements." (Opp. 15.) To the contrary, the FAA's completion of its airspace analyses shows that it has formally approved this process and the Town's plan because, upon making a "no objection" finding to a request to activate a new airport (like JPX), the FAA is stating that the opening may occur on the date requested, here May 19, which was echoed in the FAA's *Federal Register* notice. (Supp. Aff. ¶ 3, Ex. 8.) Put simply, it is indisputable that every purported "issue" raised by Petitioners has been complied with, including: (1) the FAA completed its airspace analyses; (2) the FAA officially approved the special instrument procedures for JPX and they will be available for use on May 19; (3) all navigational, weather, and communications aids will be available for use upon opening; (4) a Letter of Agreement with New York TRACON for air traffic control services has been established; and (5) the FAA has certified JPX's air traffic controllers and delegated airspace to the Town. (*Id.* ¶ 6.)

With respect to the second basis for dismissal, Petitioners do not dispute the fact that "neither the [FAA] Act nor the [federal aviation] regulations create implied private rights of action." *Bonano v. E. Caribbean Airline Corp.*, 365 F.3d 81, 86 (1st Cir. 2004); *Montauk-Caribbean Airways, Inc. v. Hope*, 784 F.2d 91, 97 (2d Cir. 1986); *Paskar v. City of N.Y.*, 3 F. Supp.

3d 129, 136 (S.D.N.Y. 2014) (“[T]he Federal Aviation Act does not create a private right of action, either explicitly or implicitly.”). Instead, Petitioners claims that they “have a right to bring such claims” because the Town “fail[ed] to meet a series of prerequisites set out by federal law” and “despite these failures, decided to announce the closing of HTO Airport knowing that they had failed to meet its obligations and could not proceed.” (Opp. 12.) Petitioners’ misrepresentation of the facts is unavailing since, as discussed *supra*, the Town has complied with all “prerequisites set out by federal law.” Indeed, on April 27, 2022, the FAA itself released a statement that it “is working closely with the Town of East Hampton so all federal regulations are followed to ensure the safety of the airspace.” (Supp. Aff. ¶ 7, Ex. 11.)

Petitioners’ attempts to convince this Court that the FAA does not have primary jurisdiction over these types of claims and enforcement are also futile. *First*, while Petitioners concede that FAA regulations provide a mechanism to bring a formal action to be adjudicated by the FAA and that it is “arguably applicable,” Petitioners claim that they were not required to proceed through this administrative process because doing so would be inconvenient. (*See* Opp. 13.) Setting aside the fact that the Part 16 process is not just “arguably” but undoubtedly applicable, Petitioners cannot ignore the FAA’s primary jurisdiction simply because it is inconvenient for them. The Part 16 process is intended for challenges to airport sponsor action vis-à-vis the federal aviation regulations and that is exactly what Petitioners are trying to do here through their claims.⁵ As a result, Petitioners were required to file a formal action with the FAA and request that it intervene. Recognizing that the FAA has already approved the Town’s plan, Petitioners sidestepped this requirement in hopes that a court would issue an inconsistent ruling.

⁵ Indeed, the FAA and DOT are now reviewing actions related to the ANCA issues discussed *supra*, further confirming primary jurisdiction. *See* FAA Docket No. 16-22-05; DOT Docket No. DOT-OST-2022.

Second, Petitioners’ waste time pointing out that the Town’s Motion cited federal cases as opposed to state cases, suggesting that such a tact somehow negates the FAA’s primary jurisdiction. (Opp. 14.) Of course, the standard that Petitioners set forth is the same under federal law, and both support the conclusion that these claims should be addressed by the FAA in the first instance. *Matter of Neumann v. Wyandanch Union Free Sch. Dist.*, 84 A.D.3d 816, 818 (2d Dep’t 2011) (Under New York law, “primary jurisdiction provides that where the courts and an administrative agency have concurrent jurisdiction over a dispute involving issues beyond the conventional experience of judges ... *the court will stay its hand until the agency has applied its expertise to the salient questions.*”). Under both the federal and state standard, this Court should defer resolution of these specialized issues to the FAA.

Third, that the FAA administrative processes do not address all of Petitioners’ claims is wholly irrelevant and does not defeat the FAA’s primary jurisdiction over these specific claims. The Town has never claimed that the FAA has primary jurisdiction over this entire action (*i.e.*, the SEQRA claim)—rather, the FAA has primary jurisdiction over Petitioners’ FAA regulatory and associated airport capability claims.

Fourth, Petitioners impermissibly conflate primary jurisdiction and exhaustion of administrative remedies in claiming that there are “exceptions to the general rule of exhaustion of administrative remedies.” (Opp. 14.) Although related, these doctrines are not interchangeable, and Petitioners failed to cite any authority providing that exceptions to one apply to the other.

Finally, in a last-ditch effort, Petitioners ask this Court to “exercise concurrent jurisdiction” with the FAA. (Opp. 14.) Petitioners’ invitation to this Court to overrule the FAA is exactly what the primary jurisdiction doctrine is intended to prevent—inconsistent rulings between the agency charged with particular regulatory duties and the courts. *See Ellis v. Tribune Television Co.*, 443

F.3d 71, 88 (2d Cir. 2006) (“[T]he Supreme Court has made clear that district courts should not issue injunctive relief while a decision over which the [agency] has exclusive authority is pending”); *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. Of Trade*, 412 U.S. 800, 821 (1973) (“The fact that issuing an injunction may undercut the policies served by the doctrine of primary jurisdiction is therefore an important element to be considered.”) The FAA not only suggested the path that the Town ultimately adopted (O’Connor Aff. ¶ 3, Ex. 1) but has already issued its formal approval of the Town’s plan to deactivate HTO on May 17, 2022 and open JPX on May 19, 2022. (*Id.* at ¶¶ 13, 15, Exs. 5-7.) Petitioners are asking this Court to overrule the agency entrusted with protecting the national airspace system in direct contravention of the primary jurisdiction doctrine.

In sum, this Court should dismiss these claims because they are moot, primary jurisdiction rests with the FAA, and Petitioners do not have a private right of action to bring these claims in this court.

IV. PETITIONERS’ NYSDOT CLAIM SHOULD BE DISMISSED [COUNT III]

Petitioners’ claim that the Town violated 14-h.3 of the New York State Transportation Law and New York State General Business Law, Article 14, Section 249, similarly fails. Petitioners concede that the first component of their claim is moot because the Town’s conduct “appears to meet the requirement of 14-h.3 of the New York State Transportation Law.” (Opp. 15, n. 2.) But Petitioners double-down on the Section 249 component of this claim despite failing to dispute any of the arguments raised by the Town. The entire thrust of Section 249 is to further the “authority for municipalities” to—subject to any “reasonable conditions” from NYSDOT—oversee the creation of privately owned airports. N.Y.G.B.L. §§ 249.1, 249.3. Here, the Town contacted NYSDOT before notifying the FAA of its intent to transition HTO and squarely asked NYSDOT how the Town should proceed. NYSDOT instructed the Town to submit Form 7480-1s, cooperate

with all FAA requests, and keep NYSDOT apprised of progress—that is what the Town has done. (Supp. Aff. ¶ 10, Exs. 12-19.) NYSDOT correctly recognized that the Town and FAA are working together to deactivate HTO and activate JPX—it imposed a “reasonable condition[]” that the Town coordinate closely with the FAA in resolving the complex regulatory issues at play, and asked to be kept updated on progress. *See* § 249.1. NYSDOT has repeatedly confirmed that nothing further is required, and Petitioners fail to explain why NYSDOT’s approach is unreasonable. Therefore, even assuming that section 249 applies—which it does not—the Town did not act arbitrarily and capriciously.

CONCLUSION

The Town respectfully requests that the Court grant its motion to dismiss and dismiss the Petition.

Dated: May 2, 2022
New York, New York

Respectfully submitted,

COOLEY LLP

By: /s/ Philip M. Bowman

Philip M. Bowman, Esq.
55 Hudson Yards
New York, New York 10001
Phone: (212) 479-6000
pbowman@cooley.com

William V. O'Connor, Esq.*
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
Phone: (858) 550-6000
Fax: (858) 550-6420
woconnor@cooley.com

Andrew D. Barr, Esq.*
Cooley LLP
1144 15th Street, Suite 2300
Denver, CO 80202
Phone: (720) 566-4000
Fax: (720) 566-4099
abarr@cooley.com

Adam M. Katz, Esq.
Cooley LLP
500 Boylston St.,
Boston, MA 02116
Phone: (617) 937-2300
Fax: (617) 937-2400
akatz@cooley.com

Dan Ruzow
druzow@woh.com
John Henry
jhenry@woh.com
Christopher McDonald
cmcdonald@woh.com

WHITEMAN OSTERMAN & HANNA LLP
One Commerce Plaza, 19th Floor
Albany, NY 12260

Nicholas Rigano
538 Broadhollow Rd
Melville, NY 11747
Phone: (631) 756-5900
nrigano@riganollc.com

Rigano LLC

**pro hac vice admission*

*Attorneys for Respondent Town of East
Hampton, New York*

TO: *(via NYSCEF)*

Steven C. Russo

russos@gtlaw.com

Michael A. Berlin

berlinm@gtlaw.com

Dale R. Goldstein

goldsteind@gtlaw.com

Adam Kirschbaum

kirschbauma@gtlaw.com

GREENBERG TRAURIG, LLP

One Vanderbilt Avenue

New York, New York 10017

Brian C. Doyle

GREENBERG TRAURIG, LLP

2317 Montauk Highway

Bridgehampton, New York 11932

Attorneys for Petitioners

CERTIFICATION OF COMPLIANCE WITH UNIFORM CIVIL RULE 202.8-b(b)

I hereby certify the foregoing Reply in Support of Respondent's Motion to Dismiss the Petition exclusive of caption, table of contents, table of authorities, and signature block comprises of 4200 words, and the complies with the Uniform Civil Rule 202.8-b(b).

Dated: May 2, 2022
New York, New York

Respectfully submitted,

COOLEY LLP

By: /s/ Philip M. Bowman
Philip M. Bowman, Esq.
55 Hudson Yards
New York, New York 10001
Phone: (212) 479-6000
pbowman@cooley.com

William V. O'Connor, Esq.*
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
Phone: (858) 550-6000
Fax: (858) 550-6420
woconnor@cooley.com

Andrew D. Barr, Esq.*
Cooley LLP
1144 15th Street, Suite 2300
Denver, CO 80202
Phone: (720) 566-4000
Fax: (720) 566-4099
abarr@cooley.com

Adam M. Katz, Esq.
Cooley LLP
500 Boylston St.,
Boston, MA 02116
Phone: (617) 937-2300
Fax: (617) 937-2400
akatz@cooley.com

Dan Ruzow

druzow@woh.com

John Henry

jhenry@woh.com

Christopher McDonald

cmcdonald@woh.com

**WHITEMAN OSTERMAN & HANNA
LLP**

One Commerce Plaza, 19th Floor
Albany, NY 12260

Nicholas Rigano

538 Broadhollow Rd

Melville, NY 11747

Phone: (631) 756-5900

nrigano@riganollc.com

Rigano LLC

**pro hac vice admission*

*Attorneys for Respondent Town of East
Hampton, New York*

Exhibit 32

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

-----	X	
East End Hangars, Inc., Hampton Hangars, Inc.,	:	
a/k/a Hampton Hangers, Inc., Thomas Bogdan,	:	INDEX NO. 602799/2022
Joseph Dryer, Suse Lowenstein, Lynden	:	
Restrepo, and Louise Sasso,	:	AFFIDAVIT OF SUPERVISOR
	:	<u>PETER VAN SCOYOC</u>
	:	
Petitioners,	:	Hon. Paul M. Hensley
	:	
For a Judgment Under Article 78 of the CPLR	:	
	:	
-against-	:	
	:	
Town of East Hampton, New York,,	:	
	:	
Respondent.	:	
	:	
-----	X	

STATE OF NEW YORK :
: ss.:
COUNTY OF SUFFOLK:

PETER VAN SCOYOC, being duly sworn deposes and says as follows:

1. I am the Supervisor of the Town of East Hampton (the “Town”). I have held this office since January 2018. Prior to that, I served the Town as Deputy Supervisor and Town Councilman. I have been very involved with the East Hampton Airport (“HTO”) in these roles and have personal knowledge of the impacts—good and bad—that HTO has on the community. I have personal knowledge of the matters set forth herein, except those matters stated to be upon information and belief, and as to those matters, I believe them to be true.

2. I submit this affidavit in opposition to Petitioners’ motion seeking to enjoin the Town from deactivating HTO as a public-use airport on May 17, 2022, and opening a new, private-use airport on May 19, 2022 (the “New Airport”). I respectfully submit that the Court should deny Petitioners’ motion in its entirety.

3. The Town is the owner and sponsor of HTO. Although HTO is a Town-owned asset, the Town has not been able to assert meaningful local control over HTO due to federal obligations. Nearly all of those federal obligations expired in September 2021, however, and now the Town is trying to terminate the remaining federal obligations—which the FAA told the Town can be achieved by closing or “deactivating” HTO and opening the New Airport—so that the Town can exert local control over aviation operations that occur in the Town. The Town has worked tirelessly to this end and is now on the verge of obtaining the local control it has sought for decades. As set forth below, the Town has committed to undertaking a full-blown environmental review under the State Environmental Quality Review Act (“SEQRA”) prior to implementation of any operational limitations.

4. It is my belief, based on community feedback, that if a modified airport is not permitted to operate, permanent closure of the airport is the only viable alternative. There are no circumstances under which the majority of the community would tolerate keeping HTO as a public-use airport. Generally speaking, as an elected representative it is my duty to listen to all constituents and act to effectuate what I understand to be the preference of the majority of constituents. In this case, that means either modifying the airport or closing it altogether.

5. It is also my belief, based on discussions with the FAA, that the process to deactivate HTO and activate the New Airport involves many steps and significant coordination with various parts of the FAA as well as other federal agencies, such as the FCC. It is my understanding that it would be very difficult, if not impossible, for the FAA to undo all the work that it has done related to the deactivation and activation processes. It is my understanding that stopping the deactivation of HTO and activation of the New Airport would require a large investment of time by FAA personnel and significant work by the FAA on an expedited timeline,

if it could be done at all. Also, the Town filed the documents necessary to effectuate this regulatory change with the FAA on January 20, 2022, before this suit was initiated. As such, there is nothing more for the Town to do since the Town's portion of the closure-and-opening process has already taken place and been approved by the FAA. Indeed, if the Town did nothing else between now and May 17, 2022, HTO would close. Thirty-three hours later, the New Airport would open.

6. As a general matter, when an airport "sponsor," such as the Town, accepts federal funding, the sponsor commits to "grant assurances." Upon information and belief, the grant assurances are contractual obligations that require airport sponsors, like the Town, to do or not do certain things. As a practical matter, they effectively remove the sponsor's ability to exert local control over the airport notwithstanding that the sponsor owns the airport. It is my understanding that the list of grant assurances that generally apply to airports that accept federal funds is located here: https://www.faa.gov/airports/aip/grant_assurances/

7. Upon information and belief, the federal grant assurances obligated the Town to operate HTO for 20 years from the date funds were last received. This meant that HTO was federal obligated until September 2021—20 years after it last accepted federal funds in September 2001.

8. Upon information and belief, there are also federal statutory assurances that apply to an airport that receives federal airport funds. The FAA has informed the Town that these statutory assurances terminate only upon closure of an airport. Attached hereto as **Exhibit 1** is a true and correct copy of the FAA letter dated November 6, 2020. This letter contains the FAA's explanation that closure of HTO would terminate all federal obligations.

9. For context, it is my understanding that in 1994—in the midst of significant debate over whether and how HTO fit within the East Hampton community—the Town accepted federal funding for airport improvements. Attached hereto as **Exhibit 2** is a true and correct copy of a full

list of grant assurances accepted by the Town.

10. Upon information and belief, following the runway expansion in the late 1990s, the Town saw a steady but manageable increase in air traffic, which was accompanied by increased noise pollution and greenhouse gas emissions.

11. Upon information and belief, in 2003, a group of East Hampton residents upset with HTO-related noise and pollution filed a lawsuit against the FAA and the Department of Transportation, seeking to block the provision of federal funds to the Town (which would have, in turn, eventually freed the Town to regulate air and noise pollution). Attached hereto as **Exhibit 3** is a true and correct copy of the proceeding *Committee to Stop Airport Expansion v. FAA*, 320 F.3d 285.

12. Upon information and belief, that 2003 litigation resulted in a 2005 settlement agreement (the “2005 Settlement”). Attached hereto as **Exhibit 4** is a true and correct copy of the 2005 Settlement.

13. Upon information and belief, under the terms of the 2005 Settlement, the FAA agreed that it would not enforce certain grant assurances with respect to HTO after December 31, 2014, such that the Town could exert local control over HTO’s operations and respond to community concerns over the rapid growth in operations at HTO. See Exhibit 4.

14. It is my understanding that in 2011, then-United States Representative Timothy Bishop—whose district included the Town—submitted a letter to the FAA asking for the FAA’s position on the legal effect of the 2005 Settlement vis-à-vis the Town’s ability to adopt localized regulations for HTO (the “Bishop Letter”). Attached hereto as **Exhibit 5** is a true and correct copy of the Bishop Letter.

15. It is my understanding that the FAA responded to the Bishop Letter in a letter of its

own, explaining its view that (1) under the 2005 Settlement, the FAA would not enforce against the Town certain grant assurances that had prevented the town from restricting access to HTO; and (2) the Town was relieved from its obligations under the Airport Noise and Capacity Act of 1990 (“ANCA”). See Exhibit 5.

16. As a result of the FAA’s response to Representative Bishop, the Town began the process of developing three local laws that would create reasonable restrictions on operations at HTO. The Town believed it had the right to do so based on the FAA’s letter and thus conducted a thorough public engagement process to determine what changes the community wanted to see at HTO. This culminated in three local laws being enacted.

17. The first local law created a baseline curfew for all aircraft; the second created a more robust curfew for “noisy” aircraft; and the third created a one-round-trip-per-week limit for noisy aircraft (collectively, the “Local Laws”). See Town Code 75-38 and Town Code 75-39. Attached hereto as **Exhibit 6** is a true and correct copy of the Local Laws.

18. Under the 2015 Local Laws, an aircraft was considered “noisy” when it produced a measurable sound level of 91.0 EPNdB or higher. This is an objective standard reflected in an FAA Advisory Circular. The Town worked with noise consultants to arrive at this noise threshold. See Town Code 75-38 and Town Code 75-39.

19. The Town’s work during this period of time before, during, and after the 2015 Local Laws were enacted is largely captured at the website www.HTOplanning.com. The work set forth on this website demonstrates the Town’s attempts to protect the community from the ever-increasing noise and pollution that was created by aircraft coming from and going to HTO. All of these documents informed the Town’s process moving forward and, in one way or another, led the Town to the decision to close HTO and open a New Airport and thus these documents are all part

of and incorporated as part of the administrative record supporting the Town's decision.

20. In 2015, despite the Town's reliance of the FAA's response to Representative Bishop, aviation stakeholders sued the Town and tried to invalidate the 2015 Local Laws. After litigation in federal court, the Town's laws were struck down as the court found that the 2015 Local Laws were impermissible under a federal statute called the "Airport Noise and Capacity Act of 1990" or "ANCA." It is my understanding that the court made clear that the Town must either comply with ANCA's regulatory process for enacting restrictions, or convert HTO from being a "public use" airport to a "private use" airport. *See Friends of East Hampton, Inc. et al v. The Town of East Hampton*, 841 F.3d 133 (2d Cir. 2016).

21. After the Second Circuit's decision in *Friends of East Hampton Airport*, the Town continued to assess its options for implementing commonsense noise, pollution, and safety controls at HTO. Because the Town could not convert HTO into a "private use" airport at that time, the Town initiated a "Part 161" study to try and establish noise and access restrictions compliant with ANCA.

22. But in 2019, after years of discussions with the FAA and considerable expenditure, it became clear to the Town that progress via Part 161 was impracticable. For example, it is my understanding that Part 161 assesses noise impacts by looking at average daily noise impacts, which would understate noise impacts at a seasonal airport like HTO. The Town was also made aware that no airport in the United States has *ever* successfully obtained Part 161 relief. Attached hereto as **Exhibit 7** is a true and correct copy of a presentation prepared by aviation counsel Cooley LLP for the Town of East Hampton dated October 19, 2021.

23. The Town ultimately decided that a Part 161 process was not viable and thus it turned its attention to its only other option it had if the community decided that it wanted to have

an airport available in the community: converting HTO from a “public use” airport to a “private use” airport. If this conversion could not occur, it is my belief that the only way forward would be to close HTO and not open a new airport. I do not believe that the community would tolerate keeping HTO as a public-use airport due to the issues it has caused over the past few decades.

24. Months of discussions with the FAA in 2020 culminated in a November 2020 letter from the FAA, outlining the Town’s options upon expiration of the grant assurances in September 2021: (1) Negotiation of an agreement for mandatory restrictions on aircraft operators per [14 C.F.R. §§ 161.101, *et seq.*]; (2) Closure of the Airport after the grant assurances expire (September 2021) and the reopening of the airport; (3) Complete closure of the airport after the grant assurances expire (September 2021); or (4) Continue to operate the airport as a public use airport. See Exhibit 1.

25. In the November 2020 Letter, the FAA confirmed that closing HTO would “extinguish[]” the Town’s “FAA obligations” and authorize the Town to open “a private-use airport” using a prior permission required framework:

Option 2 considers that the federal grant assurances will expire after September 26, 2021 at which time the federal obligation to keep the airport open expires. The Town can close the airport, use the remaining funds in the airport account as it desires, dispose of the land, or not. ***The remaining FAA obligations, such as Exclusive Rights, Revenue Use, Civil Rights, are extinguished upon closure.*** The Town of East Hampton can then choose to change the use of the airport from public to private use.

The Town could also re-open as a traditional public-use airport or as ***a private-use airport made available to others by the Town through authorized rights or by requiring prior permission.*** A private-use airport would not be eligible for inclusion in the NPIAS or FAA funding. The Town would still need to comply with New York State private-use airport requirements and standards.

26. With the knowledge that the Town had FAA approval regarding the future of HTO, the Town retained experts, prepared studies, and began outreach to the community to assess

whether to keep the airport as is, modify the airport to mitigate the issues that had long plagued the community, or close the airport permanently. True and correct copies of the Town retained experts' studies and community outreach documents can be found here <https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro>. All of these documents informed the Town's process moving forward and, in one way or another, led the Town to the decision to close HTO and open a New Airport and thus these documents are all part of and incorporated as part of the administrative record supporting the Town's decision.

27. In 2021, the Town solicited reports from five different subject-matter experts, who advised the town on the potential environmental, economic, zoning, and noise effects of changes to HTO.

28. Also in 2021, the Town engaged SEQRA counsel to design a comprehensive study of environmental factors and help ensure compliance with SEQRA's procedural and substantive requirements.

29. The Town's economic consultants analyzed the financial impact of modifying operations at HTO, including by conducting two on-the-ground surveys geared toward determining how airport users would react if HTO were closed outright. The consultants concluded that, even if HTO were closed outright (which, to be clear, is far more extreme than the proposed 33-hour temporary closure), it would not meaningfully impact the Town financially. Attached hereto as **Exhibits 8-12** are true and correct copies of the Town's economic consultants' analyses of the financial impact of modifying operations at HTO. A recording of a public presentation by the economic consultant is located here: <https://www.youtube.com/watch?v=eJkJ4GUI-Ag>

30. The Town's environmental consultant assessed greenhouse gas emissions from

aircraft utilizing HTO. The consultant determined that while aircraft at HTO are responsible for 6% of the Town's emissions, only 1% of the Town's residents use HTO. Attached hereto as **Exhibits 13-14** are true and correct copies of the Town's environmental consultant's findings for greenhouse gas emissions from aircrafts utilizing HTO. A recording of the environmental expert's public presentation is located here https://www.youtube.com/watch?v=agt_TZgwYJk.

31. The Town's aviation noise consultant conducted several separate analyses on possible diversion of flights to other airports, annual operational data, annual complaint data, and historical noise impacts. Attached hereto as **Exhibits 15-20** are true and correct copies of the Town's aviation noise consultant's findings. Recordings of public presentations made by the noise consultant are located here <https://www.youtube.com/watch?v=odV1yuYCKU0> and here <https://www.youtube.com/watch?v=JmqMtJS8-s>.

32. Through modeling analysis of known aircraft flight data, the aviation noise consultant concluded that charter helicopter operators have been largely uncooperative with the Town's voluntary noise abatement routes, choosing instead to fly directly overcrowded residential areas, sometimes at dangerously low altitudes (*e.g.*, 400 feet or lower directly above rooftops). The aviation noise consultant also found that operations had significantly increased when compared to operations that occurred in 2015.

33. The Town's zoning and planning consultant prepared a report demonstrating that, due to HTO's unusual location and proximity to East Hampton's main aquifer, HTO could, as needed, be converted for alternative non-airport uses that would benefit large portions of the community (*e.g.*, open recreational field space). Attached hereto as **Exhibit 21** is a true and correct copy of the Town's zoning consultant's prepared report.

34. The Town tasked its SEQRA counsel, Daniel A. Ruzow—nationally recognized

for his 40 years of work with SEQRA and as one of the co-authors of the leading treatise on SEQRA, “Environmental Impact Review in New York” (Matthew Bender 2021)—to help the Town design a data-driven environmental study measuring potentially significant environmental impacts resulting from closing HTO and opening a private-use airport and the implementation of a suite of long-term controls to manage noise and other environmental impacts.

35. Mr. Ruzow advised that the Town should collect *actual* operations data as opposed to “tabletop” (*i.e.*, simulated) data, in order to most accurately study the environmental impact, if any, of the Town’s options for controlling operations at the New Airport when preparing a draft generic impact statement pursuant to SEQRA. In fact, the Town was already in the midst of completing a tabletop study and thus the only way to obtain better information than the Town already had would be through collection of actual data.

36. These expert studies discussed above coupled with updates and reports from the Town’s aviation counsel, Cooley LLP, culminated in ten public presentations between May and October 2021 and a series of four community engagement sessions in October 2021. Attached hereto as **Exhibits 22-42** are true and correct copies of the updates and reports provided by Cooley LLP. Recordings of some of the public presentations are located here:
<https://www.youtube.com/watch?v=8vYV5ZNIAC>;
<https://www.youtube.com/watch?v=9sM5VxQwWXo>;
<https://www.youtube.com/watch?v=AGCHQhXygsQ>;

37. These community engagement sessions allowed every interested stakeholder to submit public comments on the future of HTO; interact and engage with fellow community members; and review the Town’s consultant reports in an open and communal setting. The Town hired Lisa Liquori to organize and oversee the sessions. Ms. Liquori was also hired to summarize

the community's feedback and present a report to the Town Board outlining the consensus view. It is my understanding that Ms. Liquori will be submitting her own declaration in this matter related to the community engagement sessions.

38. After reviewing all of the expert reports and understanding the community's views as set forth at the four community engagement sessions, the Town understood its mandate: pursue the closure-and-opening option recommended by the FAA, Option 2 as set forth in the November 2020 letter, so that the Town could sensibly regulate HTO in a manner that carefully balances community needs while retaining a safe and capable airport to serve aviation stakeholders.

39. Throughout this process, the Town has at all times worked closely with the FAA. I estimate that I have had no less than 10 calls with the FAA. On these calls, the FAA typically has more than 10 attendees (sometimes many more than that) from all different business units within the agency. It is my understanding that the Town's aviation counsel has had nearly daily calls with the FAA since the beginning of January 2022 and that the entire process of effectuating Option 2 has been a joint effort. Attached hereto as **Exhibits 43-61** are true and correct copies of the Town press releases outlining major milestones related to this process, including collaboration with the FAA.

40. On January 20, 2022, the Town filed two Form 7480-1s with the FAA— notifying the FAA that the Town planned to deactivate HTO on February 28, 2022 and open the New Airport on March 4, 2022. The Town chose these dates to ensure that the closure-and-opening process would disrupt aviation as little as possible. Attached hereto as **Exhibits 62-63** are true and correct copies of the two Form 7480-1s.

41. On January 21, 2022, the Town's aviation counsel provided the NYSDOT with the Form 7480-1s that had been submitted to the FAA one day prior. It is my understanding that

NYSDOT confirmed that it wanted to be kept apprised of the process but did not have a direct role in the process. It is my understanding that the Town's aviation counsel has consulted with NYSDOT on no less than six occasions since January 2022 regarding this process. It is my understanding that at no point has NYSDOT asked the Town to submit any forms, complete any processes, or otherwise do anything specific beyond send copies of the Form 7480-1s and keep NYSDOT updated.

42. The Town contacted NYSDOT prior to submitting any FAA filings to formally begin transitioning HTO and asked NYSDOT whether the Town should take any specific actions vis-à-vis NYSDOT throughout the localization process. It is my understanding that NYSDOT advised that so long as the Town follows FAA guidance and keeps NYSDOT apprised of progress, NYSDOT approved the Town simply working things through with the FAA. The Town has continued to update NYSDOT and has repeatedly confirmed that NYSDOT had no further requirements for state compliance. Attached hereto as **Exhibit 64-71** is a true and correct copy of the Town's Correspondence with the NYSDOT.

43. On February 2, 2022, the FAA sent the Town a letter outlining several issues the FAA was concerned about regarding its internal processes as it related to the Town's timing for deactivation and activation. All of these issues have since been addressed. Attached hereto as **Exhibit 72** is a true and correct copy of the February 2, 2022 FAA letter.

44. On February 16, 2022, the FAA suggested—and the Town agreed—that the Town postpone the deactivation of HTO from February until May. Attached hereto as **Exhibit 73** is a true and correct copy of the February 17, 2022 press release outlining this decision.

45. In the following weeks, the Town and FAA checked off each and every mandatory item discussed in the FAA's February 2, 2022, letter, obtaining approval for: a private air traffic

control tower at a private-use airport; a process to finalize agreements between the Town and FAA air traffic controllers; establishment of the Town's communication, navigational, and weather aids; and transfer of certain equipment to the Town, such as runway end identifier lights.

46. On March 18, 2022, the FAA completed its airspace analysis finding "no objection" to the Town's plan to activate the New Airport on May 19, 2022, at 09:00 am local time. Attached hereto as **Exhibit 74** is a true and correct copy of the March 18, 2022 letter of determination.

47. On March 22, 2022, the FAA completed its airspace analysis finding "no objection" to the Town's plan to deactivate HTO on May 17, 2022, at 11:59 pm local time. Attached hereto as **Exhibit 75** is a true and correct copy of the March 22, 2022 letter of determination.

48. The Town explained the significance of the airspace analyses in a press release on March 22, 2022. In short, once the airspace analyses were completed, the FAA had effectively given the Town's process full authorization and confirmed that no safety issues were associated with the New Airport. Attached hereto as **Exhibit 76** is a true and correct copy of the Town's Press Release dated March 22, 2022.

49. On March 24, 2022, the New Airport was assigned a new airport identifier, or "LocID." The FAA issued the identifier of "JPX." It is my understanding that this LocID can only be issued once the airport has been approved by the FAA. Attached hereto as **Exhibit 77** is a true and correct copy of the March 24, 2022 letter.

50. The Town is currently (at the time of this affidavit being filed with this Court) finalizing letter agreements with internal groups within FAA (*e.g.*, air traffic controllers) and completing the transfer of equipment between the FAA and Town.

51. Based on discussions with the FAA, it is my understanding that all safety

capabilities of HTO will be available at the New Airport upon opening on May 19, 2022.

52. It is my understanding, based on discussions with the FAA, that all operational capabilities of HTO will be available at the New Airport upon opening on May 19, 2022.

53. It is my understanding, based on discussions with the FAA, that the New Airport will be materially identical to HTO, but for the Town's new ability to legally exert local control consistent with federal law.

54. Regarding special instrument procedures—the private version of instrument procedures that are in place at HTO—the Town finalized and submitted its application package for special procedures to the FAA on March 24, 2022. The Town provided the special procedure application package to all known operators; to the sole FBO at HTO, Sound Aviation; published a press release; posted the application at HTO; and posted the application at Town Hall. Operators are currently submitting applications to seek authorization to use the special procedures. Attached hereto as **Exhibit 78-79** are true and correct copies of the published press release and the special procedure application package.

55. In parallel with expert work, community engagement, and collaboration with the FAA, the Town has overseen a comprehensive, transparent SEQRA analysis. It is my understanding that SEQRA requires the Town to take a “hard look” at actions it is contemplating to assess whether such action may have a significant adverse environmental impact. Attached hereto as **Exhibits 80-85** are true and correct copies of the Town's airport-related SEQRA Documents.

56. On January 20, 2022, prior to the Town notifying the FAA that the Town would pursue the transitional plan outlined in the November 2020 Letter, the Town issued a resolution reflecting its first important SEQRA determination. Attached hereto as **Exhibit 86** is a true and

correct copy of the Town's Press Release dated January 20, 2022.

57. The Town adopted its resolution containing its “negative declaration” regarding the closure of HTO and attached supporting environmental assessment forms and supplemental narratives. Attached hereto as **Exhibit 87** is a true and correct copy of the negative declaration (Resolution 2022-190) dated January 20, 2022.

58. In the same resolution (2022-190), the Town also noted its intent to adopt a “positive declaration” to “examine the environmental, economic and social effects of potential changes to future operation of” the New Airport and directed its environmental consultants to prepare a positive declaration and draft scoping outline for a draft generic environmental impact statement.

59. The Town determined that the most prudent path to comply with SEQRA is to collect actual data reflecting the actual impact (if any) of noise, environmental, and safety regulations adopted at the New Airport.

60. Actual data is presently unavailable as a direct result of HTO being public use: the Town has no ability to implement access restrictions or otherwise exert local control and thus the Town had to convert HTO to a private use airport before it could meaningfully engage in a SEQRA analysis of the long term operation of the New Airport.

61. From the outset, the Town has committed to conduct a full generic environmental impact statement (or “GEIS”), the most exhaustive outcome contemplated by SEQRA. On February 17, 2022, the Town adopted another SEQRA resolution (Resolution 2022-299) containing its Positive Declaration and Draft Scoping Outline for preparation of a Draft Generic Environmental Impact Statement for Consideration of Long-Term Operational Changes at the New Airport. It also scheduled a public scoping meeting for March 1, 2022 and announced a public

comment period that would extend to March 18, 2022, for submission of written comments on the Draft Scoping Outline. Attached hereto as **Exhibit 88** is a true and correct copy of Resolution 2022-299.

62. This resolution (2022-299) reiterated that, once the Town had closed HTO and opened the New Airport (and in so doing obtained access to reliable data), the Town would “study the impact of operational restrictions designed to minimize and/or avoid longstanding noise, environmental, safety, and other impacts.”

63. On March 3, 2022, the Town issued a supplemental resolution (Resolution 2022-342) amending its January 20, 2022, SEQRA Negative Declaration (Resolution 2022-299) in connection with the changes dates for closing HTO and opening the New Airport as requested by the FAA. The amended Negative Declaration was accompanied by a supplemental Environmental Assessment Form and Narrative considering the potential effects of the new closure date of May 17, 2022, and New Airport opening 33 hours later on May 19, 2022. Attached hereto as **Exhibit 89** is a true and correct copy of Resolution 2022-342.

64. In adopting Resolution 2022-342, the Town Board determined that the closure of HTO and opening of the New Airport with no changes in operational control did not commit the Town Board to any particular future course of action that would affect the environment. Thus, the Town Board determined that the closure-and-opening process would not itself have significant environmental impacts, and that environmental review of the transition from a public to a private airport could be segmented from the later determination of what operational limitations, if any, would be imposed. The Town Board likewise reasoned that such an approach would be no less protective of the environment within the meaning of SEQRA, given that the Town would be undertaking a full SEQRA DGEIS process prior to the implementation of any operational changes.

65. Specifically, the Town Board found:

WHEREAS, while a decision to close the public use Airport and open a private use New Airport under FAA rules is a discretionary action of the Town and therefore requires consideration of potential impacts under SEQRA, it is also a purely administrative step and it does not commit the Town to a future course of actions that will affect the environment, but instead provides greater autonomy for the Town's operational authority. After careful study, the Town Board believes that opening a private use New Airport will not in and of itself have any significant adverse environmental effects and can be permissibly segmented from the consideration of any long-term operational changes which will be evaluated in the DGEIS as set forth in 6 NYCRR §617.3(g)(1). Such authority over airport operations serves an independent function or utility from whatever future restrictions or controls are determined appropriate by the Town Board after the Final GEIS is available and SEQRA Findings issued. Both the January Determination (and its supporting environmental analysis) and the supplemental environmental analysis presented in Appendix A hereto carefully considered whether closing the Airport and opening a New Airport as outlined in the FAA's November 2020 letter would potentially have a significant adverse impact on the environment and concluded any effects would be minor and temporary. Coupled with the adoption of a Positive Declaration to examine the environmental, economic and social effects of potential changes to future operation of the New Airport, such permissible segmentation under SEQRA is no less protective of the environment.

Given the facts presented here, I respectfully submit that this determination is well within the Town Board's discretion and neither arbitrary nor capricious.

66. As with all aspects of the Town's process, the Town's SEQRA study has prioritized transparency and public involvement. The Town invited public comment on the proposed "scope" of its environmental analysis and has dutifully reviewed these comments as they have arrived. Attached hereto as **Exhibits 90-91** are true and correct copies of the Town's draft scoping outline.

67. On March 8, 2022, the Town issued a press release urging continued public participation before the comment period closed on March 18, 2022. Attached hereto as **Exhibit 92** is a true and correct copy of the March 8, 2022 Press Release.

68. Approximately 500 comments were submitted in response to the Draft Scoping Outline. The wide variety of viewpoints reflected in the comments that were submitted reflect the investment, interest, and passion of the community and all stakeholders in the Town's public SEQRA process.

69. Notably, many of the comments have indicated that while the current unrestricted public-use regime at HTO cannot continue, the Town should go much further in limiting access at the New Airport or perhaps not open the New Airport at all.

70. For example, Amy B. stated "For more than 25 years I have summered in Wainscott where I built a house for my family and where I vote. When we first came, the occasional airplane overhead presented no challenge to the rest, recreation, and natural beauty that attracted us. Over the years, however, the extraordinary increase in the volume of air traffic, and especially helicopters, has progressively robbed us of the tranquility, the peace, and the quiet that drew us to Wainscott. For the last several summers, . . . the clangor of helicopters and the roar of jets, have constantly interrupted the simple pleasures of conversation with friends on the terrace (or even indoors), strolls in the garden, and sailing on Georgica Pond. The call of bird song and the whisper of the sea breeze are regularly drowned out. Phone calls are interrupted. The furniture is rattled. And so are our nerves. . . . There is *no* acceptable route to [a new airport]." Attached hereto as **Exhibit 93** is a true and correct copy of the correspondence.

71. Patricia C. stated "Your desire to cause as little disruption as possible to the aviation industry when the airport closes in May indicates that the . . . aviation industry remain[s] in firm control of East Hampton Airport, private or public, with or without grant assurances. That is profoundly disturbing. . . . [The] proposed limit of one roundtrip per aircraft per day ignores the well-known fact that operators with business models like BLADE have at their disposal within the

tri-state area, entire fleets of rotor and fixed-wing aircraft available on short notice, so can easily avoid this restriction. . . . [Keeping the airport open] will not: lessen safety concerns, or prevent reckless flights at low-altitudes above our homes; prevent continued erosion of our already severely diminished quality of life; prevent threats to the health of our air quality and fragile environment, specifically our ground and surface waters, farm fields, outdoor recreational areas, and precious parks, playgrounds, and nature reserves; [or] lessen toxic emissions that exact a heavy toll on the planet, the public health and imperil the future of our children.” Attached hereto as **Exhibit 94** is a true and correct copy of the correspondence.

72. Lynn C. and Howard F. stated “The environmental impact of the airport is catastrophic. The threat to our aquifer, the air quality, the health of our ponds and farmland, and our own humble vegetable gardens all lead to the conclusion that we are rapidly destroying our natural resources. This is a problem now, not something that may occur in the future. The airport is a huge polluter that is, frankly, unnecessary.” Attached hereto as **Exhibit 95** is a true and correct copy of the correspondence.

73. Sheryl G. stated “I ask the Town to consider: (1) Prohibiting the sale of aviation fuel and the sale and use of leaded fuel, effective immediately . . . ; (2) Banning all helicopters, commercial and private; (3) Banning all jets . . . ; (4) Banning all piston planes; [and] (5) Banning all seaplanes. . . . [T]he only responsible action is to permanently CLOSE THE AIRPORT.” Attached hereto as **Exhibit 96** is a true and correct copy of the correspondence.

74. Lyle G. stated “From all that I’ve read the recommendations . . . are mere tweaks intended to mollify those who insisted the airport should be closed entirely. . . . The purpose of privatizing the airport is to allow community regulation of its use. And the purpose of the initial restrictions being placed on that use should be meaningful enough . . . to provide genuine relief for

residents who've been pleading for strong measures for the past two decades. Please consider taking a hard look at the proposals on the table. They need to be far stronger." Attached hereto as **Exhibit 97** is a true and correct copy of the correspondence.

75. Anthony L. stated "The Pro Airport community has shown no interest in compromise or any reduction in activity. On the contrary, through their words and litigious actions it is clear they will defend the . . . uninhibited ability to increase flights. I am personally in favor of outright closure or at a minimum, an outright ban of helicopter and jets of any size." Attached hereto as **Exhibit 98** is a true and correct copy of the correspondence.

76. The full set of comments regarding the Draft Scoping Outline will be publicly available in early April 2022 when the final scoping outline is prepared and presented.

77. On March 8, 2022, the Town proposed amendments to Chapter 75 of the Town Code, which relates to "Airports," so that the Town Code reflected a private-use airport. Attached hereto as **Exhibit 99** is a true and correct copy of the proposed amendments to Chapter 75 of the Town Code.

78. The Town also submitted proposed rules and regulations to govern the New Airport that included proposed new landing fees. Attached hereto as **Exhibit 100** is a true and correct copy of the proposed rules and regulations.

79. It remains the case, and the Town has repeatedly stated, that the Town is pursuing this airport process with a goal of disrupting aviation as little as possible or, hopefully, not at all. Attached hereto as **Exhibit 101-104** are true and correct copies of pertinent Press Releases and Letters.

80. Since the beginning of 2021, the Town has had more than 15 public work sessions dedicated to the airport in some capacity, issued numerous press releases, passed several

resolutions, and engaged in public discourse regarding the future of HTO. All of these materials are available on the Town's website, www.champtonny.gov. Historical documents regarding the airport and the 2015 Local Laws are available at www.htoplanning.com.

81. The Town's SEQRA process related to the airport remains ongoing. I expect many developments to occur over the next several months. All of these aspects will be part of a public process and any materials or documents will be available on the Town's website. All of those documents are pertinent to this Court's decision making.

82. Finally, I am aware that Petitioners claim that HTO has federal contractual obligations that require it to be used as a public use airport indefinitely. It is my understanding that HTO is not subject to War Asset Administration or Surplus Property Act obligations. This is confirmed by reviewing the FAA's most recent "List of Public Airports Affected by Agreements with the Federal Government." Attached hereto as **Exhibit 105** is a true and correct copy of the List of Public Airports Affected by Agreements with the Federal Government. In this FAA document, it is my understanding that HTO is designated as being "affected" by the following agreements: "G/V/Y." (See section 5, pdf page 25.) As described on page 7 of the same document, "G" means that the airport has a "grant agreement"; "V" means the airport has an "advance planning agreement"; and "Y" means the airport has a Civil Rights Act assurance. It is my understanding that if HTO had any surplus property or war asset administration obligations, including a reversionary interest, HTO would be "affected" by an agreement denoted with a "P," "R," or "3." The "P" denotes a "surplus property agreement under public law 80-289 (real property only)," an "R" denotes "surplus property agreement under Regulation 16-WAA" (the WAA is "War Asset Administration"), and a "3" denotes an "AP-4 agreement" which typically accompanied an WAA grant. Therefore, it is my understanding that the absence of a "P," "R," or

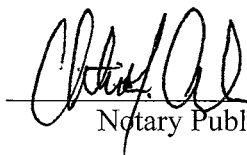
“3” confirms that no reversionary interest applies to HTO. To my understanding, this means that HTO has no perpetual federal contractual obligations, such as a right of reverter. This is consistent with my understanding that the Town owns HTO outright and consistent with the FAA offering “no objection” to the Town’s plan to close HTO and open the New Airport.

83. Looking forward at what is to come for the SEQRA process leading up to the final generic impact statement, the Town will: (1) evaluate and address the comments on the Draft Scoping Outline; (2) in April 2022, issue a Final Draft Scope and methodology memorandum; (3) in summer 2022, study and monitor the effects of a provisional set of PPR limitations; (4) in early fall 2022, complete a Draft GEIS; (5) in late fall 2022, hold a public hearing and invite comments; and (6) finally, that winter, address public comments, prepare a Final GEIS, and issue a statement of findings summarizing all environmental impacts, mitigation, and reasoning for a decision on whether and how to implement any of the PPR measures provisionally studied during the 2022 summer busy season.

84. Attached hereto as **Appendix 1** is a complete Index of Exhibits cited in this affidavit.


PETER VAN SCOYOC

Sworn to before me on this 4th day of April, 2022


Notary Public

CHRISTINA M. ARKINSON
Notary Public, State of New York
No. 01AR6112098
Qualified in Suffolk County
Commission Expires June 28, 2022

CERTIFICATION OF COMPLIANCE WITH UNIFORM CIVIL RULE 202.8-b

I hereby certify the foregoing Affidavit of Peter Van Scoyoc exclusive of caption and signature block comprises of 6,686 words, and the complies with the Uniform Civil Rule 202.8-b.

Dated: April 4, 2022
New York, New York

Respectfully submitted,

COOLEY LLP

By: /s/ Philip M. Bowman
Philip M. Bowman, Esq.
55 Hudson Yards
New York, New York 10001
Phone: (212) 479-6000
pbowman@cooley.com

William V. O'Connor, Esq.*
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
Phone: (858) 550-6000
Fax: (858) 550-6420
woconnor@cooley.com

Andrew D. Barr, Esq.*
Cooley LLP
1144 15th Street, Suite 2300
Denver, CO 80202
Phone: (720) 566-4000
Fax: (720) 566-4099
abarr@cooley.com

Adam M. Katz, Esq.
Cooley LLP
500 Boylston St.,
Boston, MA 02116
Phone: (617) 937-2300
Fax: (617) 937-2400
akatz@cooley.com

Dan Ruzow

druzow@woh.com

John Henry

jhenry@woh.com

Christopher McDonald

cmcdonald@woh.com

**WHITEMAN OSTERMAN & HANNA
LLP**

One Commerce Plaza, 19th Floor
Albany, NY 12260

Nicholas Rigano

538 Broadhollow Rd

Melville, NY 11747

Phone: (631) 756-5900

nrigano@riganollc.com

RIGANO LLC

**pro hac vice admission*

*Attorneys for Respondent Town of East
Hampton, New York*

APPENDIX 1

EXHIBIT NO.	DESCRIPTION
EXHIBIT 1	FAA letter dated November 6, 2020, which can also be found here https://ehamptonny.gov/DocumentCenter/View/9566/FAA-November-6-2020-Letter-to-Town-Supervisor-regarding-options-for-the-East-Hampton-Airport-after-grant-assurances-expire
EXHIBIT 2	Full list of grant assurances accepted by the Town, which can also be found here http://ehamptonny.gov/DocumentCenter/View/1244/Chapter-1-and-2-PDF?bidId=
EXHIBIT 3	<i>Committee to Stop Airport Expansion v. FAA</i> , 320 F.3d 285, which can also be found here https://casetext.com/case/committee-to-stop-airport-expansion-v-faa .
EXHIBIT 4	2005 Settlement in the <i>Committee to Stop Airport Expansion v. FAA</i> , 320 F.3d 285, which can also be found here https://img1.wsimg.com/blobby/go/bcc85ef4-de80-4658-b17e-8069c9c8182e/downloads/150129%20(FOEH%20v.%20FAA)%20Complaint.PDF?ver=1609266652766
EXHIBIT 5	Rep. Tim Bishop Letter, which can also be found here https://img1.wsimg.com/blobby/go/bcc85ef4-de80-4658-b17e-8069c9c8182e/downloads/140229%20FAA%20Response%20to%20Rep%20%20Tim%20Bishop%20re%20East.PDF?ver=1609266652775
EXHIBIT 6	Town of East Hampton Code, which can also be found here https://ecode360.com/30577208
EXHIBIT 7	Presentation prepared by aviation counsel Cooley LLP for the Town of East Hampton dated October 19, 2021, which can also be found here https://ehamptonny.gov/DocumentCenter/View/10285/10192021-HTO-Legal-Update-Post-Grant-Assurances---Cooley?bidId=
EXHIBIT 8	HTO Economic Impact Analysis Full Presentation dated May 11, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 9	HTO Economic Impact Analysis Full Presentation dated October 15, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 10	HTO Economic Impact Analysis Summary Presentation dated May 11, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 11	HTO Economic Impact Analysis Summary Presentation dated October 15, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro

EXHIBIT 12	HTO Impact Model Assumptions and Outputs, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 13	DW East Hampton presentation July 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 14	East Hampton - Environmental Report, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 15	HMMH Work Authorization to assist the Town of East Hampton dated January 28, 2020
EXHIBIT 16	HMMH Presentation dated May 11, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 17	Review of Jet Operations and Complaints dated May 13, 2020, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 18	HMMH HTO Shoulder 2019 2020 Results 1, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 19	A Feasibility Study of Diverting Aircraft Operations at East Hampton Airport dated September 7, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 20	A Feasibility Study of Diverting Aircraft Operations at East Hampton Airport dated September 6, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 21	Town's zoning consultant's prepared report dated August 3, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 22	2020 Airport Board Meetings
EXHIBIT 23	2020 Airport Resolutions
EXHIBIT 24	Town of East Hampton Town Board Meeting on February 11, 2020
EXHIBIT 25	Town of East Hampton Town Board Meeting on April 14, 2020
EXHIBIT 26	2021 Airport Board Meetings
EXHIBIT 27	2021 Airport Resolutions
EXHIBIT 28	Town of East Hampton Town Board Meeting on January 7, 2021
EXHIBIT 29	Cooley presentation re East Hampton Airport Update dated May 11, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 30	Town of East Hampton Town Board Meeting on May 11, 2021
EXHIBIT 31	Town of East Hampton Town Board Meeting on July 6, 2021
EXHIBIT 32	Town of East Hampton Town Board Meeting on October 12, 2021
EXHIBIT 33	Cooley presentation re HTO After Expiration of FAA Grant Assurances, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro

EXHIBIT 34	Town of East Hampton Town Board Meeting on November 9, 2021
EXHIBIT 35	Town of East Hampton Town Board Meeting on December 21, 2021
EXHIBIT 36	2022 Airport Board Meetings
EXHIBIT 37	2022 Airport Resolutions
EXHIBIT 38	Town of East Hampton Town Board Meeting on January 18, 2022
EXHIBIT 39	Town of East Hampton Town Board Meeting on February 11, 2022
EXHIBIT 40	Town of East Hampton Town Board Meeting on February 15, 2022
EXHIBIT 41	Town of East Hampton Town Board Meeting on March 1, 2022
EXHIBIT 42	Town of East Hampton Town Board Meeting on March 8, 2020
EXHIBIT 43	Town of East Hampton Press Release dated August 3, 2020
EXHIBIT 44	Town of East Hampton Press Release dated October 19, 2020
EXHIBIT 45	Town of East Hampton Press Release dated April 30, 2021
EXHIBIT 46	Town of East Hampton Press Release dated June 28, 2021
EXHIBIT 47	Town of East Hampton Press Release dated August 17, 2022
EXHIBIT 48	Town of East Hampton Press Release dated August 23, 2021
EXHIBIT 49	Town of East Hampton Press Release dated October 11, 2021
EXHIBIT 50	Town of East Hampton Press Release dated January 18, 2022
EXHIBIT 51	Town of East Hampton Press Release dated January 20, 2022
EXHIBIT 52	Town of East Hampton Press Release dated February 3, 2022
EXHIBIT 53	Town of East Hampton Press Release dated February 17, 2022
EXHIBIT 54	Town of East Hampton Press Release dated February 18, 2022
EXHIBIT 55	Town of East Hampton Press Release dated February 24, 2022
EXHIBIT 56	Town of East Hampton Press Release dated March 8, 2022
EXHIBIT 57	Town of East Hampton Press Release dated March 22, 2022
EXHIBIT 58	Town of East Hampton Press Release dated March 23, 2022
EXHIBIT 59	Town of East Hampton Press Release dated March 24, 2022
EXHIBIT 60	Town of East Hampton Press Release dated March 28, 2022
EXHIBIT 61	Town of East Hampton Press Release dated March 29, 2022
EXHIBIT 62	Form 7480-1 dated January 20, 2021 re Activation of New Airport
EXHIBIT 63	Form 7480-1 dated January 20, 2021 re Deactivation of East Hampton Airport
EXHIBIT 64	Correspondence between The Town of East Hampton and NYSDOT dated January 12, 2022
EXHIBIT 65	Correspondence between The Town of East Hampton and NYSDOT dated January 21, 2022
EXHIBIT 66	Correspondence between The Town of East Hampton and NYSDOT dated February 2, 2022
EXHIBIT 67	Correspondence between The Town of East Hampton and NYSDOT dated February 4, 2022

EXHIBIT 68	Correspondence between The Town of East Hampton and NYSDOT dated February 17, 2022
EXHIBIT 69	Correspondence between The Town of East Hampton and NYSDOT dated March 15, 2022
EXHIBIT 70	Correspondence between The Town of East Hampton and NYSDOT dated March 22, 2022
EXHIBIT 71	Correspondence between The Town of East Hampton and NYSDOT dated March 29, 2022
EXHIBIT 72	FAA letter February 2, 2022
EXHIBIT 73	Town of East Hampton Press Release dated February 17, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11750/Press-Release---Delay-of-Deactivation-of-EH-Airport-Feb-2022
EXHIBIT 74	FAA Notice of Airport Airspace Determination re East Hampton Airport Deactivation dated March 18, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/12013/FAA-Notice-of-Airport-Airspace-Determination-re-East-Hampton-Town-Airport-New-Private-Use-Airport-Activation-2022-03-22
EXHIBIT 75	FAA Notice of Airport Airspace Determination re East Hampton Airport Deactivation dated March 22, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/12014/FAA-Notice-of-Airport-Airspace-Determination-re-East-Hampton-Airport-Deactivation-2022-03-22
EXHIBIT 76	Town of East Hampton Press Release dated March 22, 2022, which can also be found here http://ehamptonny.gov/DocumentCenter/View/12017/airport-pr-rel-March-22-2022-final-draft
EXHIBIT 77	FAA letter dated March 24, 2022 re assigning location Identifier for EH Town Airport JPX, which can also be found here https://ehamptonny.gov/DocumentCenter/View/12071/FAA-Letter-Assigning-Location-Identifier-for-EH-Town-Airport-JPX
EXHIBIT 78	Town of East Hampton Press Release dated March 22, 2022, which can also be found here http://ehamptonny.gov/DocumentCenter/View/12017/airport-pr-rel-March-22-2022-final-draft
EXHIBIT 79	Town of East Hampton Special Procedures letter dated March 28, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/12070/Special-Procedures-Ltr-Signed-3-28-2022
EXHIBIT 80	Airport Scoping East Hampton Town Board Work Session dated March 1, 2022, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making ;
EXHIBIT 81	DGEIS Scoping Session Presentation dated March 1, 2022, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making

EXHIBIT 82	Appendix A to Draft Airport SEQRA Resolution - FEAF Parts I,II,III Supplemental Amended Action, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making
EXHIBIT 83	DGEIS Scoping Document Outline, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making
EXHIBIT 84	Full Environmental Assessment Form Parts I, II, and III, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making
EXHIBIT 85	Supplemental Narrative for FEAF Parts II and III, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making
EXHIBIT 86	Town of East Hampton Press Release dated January 20, 2022, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 87	Resolution 2022-190 dated January 20, 2022, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 88	Resolution 2022-299 dated February 17, 2022, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 89	Resolution 2022-342 dated March 3, 2022, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 90	Airport Scoping East Hampton Town Board Work Session dated March 1, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/12066/Airport-SEQRA-Scoping-Session-held-March-1-2022
EXHIBIT 91	Draft Scoping Outline for SEQRA Positive Declaration for East Hampton Airport Operational Changes, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11736/Appendix-C---EHA-Op-Changes-Draft-Scoping-Outline
EXHIBIT 92	Town of East Hampton Press Release dated March 8, 2022
EXHIBIT 93	Comment from Amy B. shared during the Town's public SEQRA process
EXHIBIT 94	Comment from Patricia C. shared during the Town's public SEQRA process
EXHIBIT 95	Comment from Lynn C. and Howard F. shared during the Town's public SEQRA process
EXHIBIT 96	Comment from Sheryl G. shared during the Town's public SEQRA process
EXHIBIT 97	Comment from Lily G. shared during the Town's public SEQRA process
EXHIBIT 98	Comment from Anthony L. shared during the Town's public SEQRA process
EXHIBIT 99	Town of East Hampton proposed amendments to Chapter 75, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11898/Proposed-Amendment-to-Town-Code-Ch-75-3722
EXHIBIT 100	Town of East Hampton proposed rules and regulations, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11897/New-Airport-Proposed-Rules-and-Regulations-3722

EXHIBIT 101	Town of East Hampton Press Release dated January 18, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11421/EH-Airport-pr-rel-Jan-18-2022-final
EXHIBIT 102	Town of East Hampton Press Release dated January 20, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11426/Press-Release---East-Hampton-Airport-Jan-2022
EXHIBIT 103	Town of East Hampton Press Release dated February 17, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11750/Press-Release---Delay-of-Deactivation-of-EH-Airport-Feb-2022
EXHIBIT 104	Town of East Hampton Press Release dated February 18, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11609/Frequently-Asked-Questions--East-Hampton-Airport--Feb-18-2022?bidId=
EXHIBIT 105	List of Public Airports Affected by Agreements with the Federal Government, which can also be found here https://www.faa.gov/documentLibrary/media/Order/5190.2R.pdf

Exhibit 33

1 of 31

Petitioners' motion in its entirety.

3. The Town is the owner and sponsor of HTO. Although HTO is a Town-owned asset, the Town has not been able to assert meaningful local control over HTO due to federal obligations. Nearly all of those federal obligations expired in September 2021, however, and now the Town is trying to terminate the remaining federal obligations—which the FAA told the Town can be achieved by closing or “deactivating” HTO and opening the New Airport—so that the Town can exert local control over aviation operations that occur in the Town. The Town has worked tirelessly to this end and is now on the verge of obtaining the local control it has sought for decades. As set forth below, the Town has committed to undertaking a full-blown environmental review under the State Environmental Quality Review Act (“SEQRA”) prior to implementation of any operational limitations.

4. It is my belief, based on community feedback, that if a modified airport is not permitted to operate, permanent closure of the airport is the only viable alternative. There are no circumstances under which the majority of the community would tolerate keeping HTO as a public-use airport. Generally speaking, as an elected representative it is my duty to listen to all constituents and act to effectuate what I understand to be the preference of the majority of constituents. In this case, that means either modifying the airport or closing it altogether.

5. It is also my belief, based on discussions with the FAA, that the process to deactivate HTO and activate the New Airport involves many steps and significant coordination with various parts of the FAA as well as other federal agencies, such as the FCC. It is my understanding that it would be very difficult, if not impossible, for the FAA to undo all the work that it has done related to the deactivation and activation processes. It is my understanding that stopping the deactivation of HTO and activation of the New Airport would require a large

investment of time by FAA personnel and significant work by the FAA on an expedited timeline, if it could be done at all. Also, the Town filed the documents necessary to effectuate this regulatory change with the FAA on January 20, 2022, before this suit was initiated. As such, there is nothing more for the Town to do since the Town's portion of the closure-and-opening process has already taken place and been approved by the FAA. Indeed, if the Town did nothing else between now and May 17, 2022, HTO would close. Thirty-three hours later, the New Airport would open.

6. As a general matter, when an airport "sponsor," such as the Town, accepts federal funding, the sponsor commits to "grant assurances." Upon information and belief, the grant assurances are contractual obligations that require airport sponsors, like the Town, to do or not do certain things. As a practical matter, they effectively remove the sponsor's ability to exert local control over the airport notwithstanding that the sponsor owns the airport. It is my understanding that the list of grant assurances that generally apply to airports that accept federal funds is located here: https://www.faa.gov/airports/aip/grant_assurances/

7. Upon information and belief, the federal grant assurances obligated the Town to operate HTO for 20 years from the date funds were last received. This meant that HTO was federal obligated until September 2021—20 years after it last accepted federal funds in September 2001.

8. Upon information and belief, there are also federal statutory assurances that apply to an airport that receives federal airport funds. The FAA has informed the Town that these statutory assurances terminate only upon closure of an airport. Attached hereto as **Exhibit 1** is a true and correct copy of the FAA letter dated November 6, 2020. This letter contains the FAA's explanation that closure of HTO would terminate all federal obligations.

9. For context, it is my understanding that in 1994—in the midst of significant debate over whether and how HTO fit within the East Hampton community—the Town accepted federal

funding for airport improvements. Attached hereto as **Exhibit 2** is a true and correct copy of a full list of grant assurances accepted by the Town.

10. Upon information and belief, following the runway expansion in the late 1990s, the Town saw a steady but manageable increase in air traffic, which was accompanied by increased noise pollution and greenhouse gas emissions.

11. Upon information and belief, in 2003, a group of East Hampton residents upset with HTO-related noise and pollution filed a lawsuit against the FAA and the Department of Transportation, seeking to block the provision of federal funds to the Town (which would have, in turn, eventually freed the Town to regulate air and noise pollution). Attached hereto as **Exhibit 3** is a true and correct copy of the proceeding *Committee to Stop Airport Expansion v. FAA*, 320 F.3d 285.

12. Upon information and belief, that 2003 litigation resulted in a 2005 settlement agreement (the “2005 Settlement”). Attached hereto as **Exhibit 4** is a true and correct copy of the 2005 Settlement.

13. Upon information and belief, under the terms of the 2005 Settlement, the FAA agreed that it would not enforce certain grant assurances with respect to HTO after December 31, 2014, such that the Town could exert local control over HTO’s operations and respond to community concerns over the rapid growth in operations at HTO. See Exhibit 4.

14. It is my understanding that in 2011, then-United States Representative Timothy Bishop—whose district included the Town—submitted a letter to the FAA asking for the FAA’s position on the legal effect of the 2005 Settlement vis-à-vis the Town’s ability to adopt localized regulations for HTO (the “Bishop Letter”). Attached hereto as **Exhibit 5** is a true and correct copy of the Bishop Letter.

15. It is my understanding that the FAA responded to the Bishop Letter in a letter of its own, explaining its view that (1) under the 2005 Settlement, the FAA would not enforce against the Town certain grant assurances that had prevented the town from restricting access to HTO; and (2) the Town was relieved from its obligations under the Airport Noise and Capacity Act of 1990 (“ANCA”). See Exhibit 5.

16. As a result of the FAA’s response to Representative Bishop, the Town began the process of developing three local laws that would create reasonable restrictions on operations at HTO. The Town believed it had the right to do so based on the FAA’s letter and thus conducted a thorough public engagement process to determine what changes the community wanted to see at HTO. This culminated in three local laws being enacted.

17. The first local law created a baseline curfew for all aircraft; the second created a more robust curfew for “noisy” aircraft; and the third created a one-round-trip-per-week limit for noisy aircraft (collectively, the “Local Laws”). See Town Code 75-38 and Town Code 75-39. Attached hereto as **Exhibit 6** is a true and correct copy of the Local Laws.

18. Under the 2015 Local Laws, an aircraft was considered “noisy” when it produced a measurable sound level of 91.0 EPNdB or higher. This is an objective standard reflected in an FAA Advisory Circular. The Town worked with noise consultants to arrive at this noise threshold. See Town Code 75-38 and Town Code 75-39.

19. The Town’s work during this period of time before, during, and after the 2015 Local Laws were enacted is largely captured at the website www.HTOplanning.com. The work set forth on this website demonstrates the Town’s attempts to protect the community from the ever-increasing noise and pollution that was created by aircraft coming from and going to HTO. All of these documents informed the Town’s process moving forward and, in one way or another, led the

Town to the decision to close HTO and open a New Airport and thus these documents are all part of and incorporated as part of the administrative record supporting the Town's decision.

20. In 2015, despite the Town's reliance of the FAA's response to Representative Bishop, aviation stakeholders sued the Town and tried to invalidate the 2015 Local Laws. After litigation in federal court, the Town's laws were struck down as the court found that the 2015 Local Laws were impermissible under a federal statute called the "Airport Noise and Capacity Act of 1990" or "ANCA." It is my understanding that the court made clear that the Town must either comply with ANCA's regulatory process for enacting restrictions, or convert HTO from being a "public use" airport to a "private use" airport. *See Friends of East Hampton, Inc. et al v. The Town of East Hampton*, 841 F.3d 133 (2d Cir. 2016).

21. After the Second Circuit's decision in *Friends of East Hampton Airport*, the Town continued to assess its options for implementing commonsense noise, pollution, and safety controls at HTO. Because the Town could not convert HTO into a "private use" airport at that time, the Town initiated a "Part 161" study to try and establish noise and access restrictions compliant with ANCA.

22. But in 2019, after years of discussions with the FAA and considerable expenditure, it became clear to the Town that progress via Part 161 was impracticable. For example, it is my understanding that Part 161 assesses noise impacts by looking at average daily noise impacts, which would understate noise impacts at a seasonal airport like HTO. The Town was also made aware that no airport in the United States has *ever* successfully obtained Part 161 relief. Attached hereto as **Exhibit 7** is a true and correct copy of a presentation prepared by aviation counsel Cooley LLP for the Town of East Hampton dated October 19, 2021.

23. The Town ultimately decided that a Part 161 process was not viable and thus it

turned its attention to its only other option it had if the community decided that it wanted to have an airport available in the community: converting HTO from a “public use” airport to a “private use” airport. If this conversion could not occur, it is my belief that the only way forward would be to close HTO and not open a new airport. I do not believe that the community would tolerate keeping HTO as a public-use airport due to the issues it has caused over the past few decades.

24. Months of discussions with the FAA in 2020 culminated in a November 2020 letter from the FAA, outlining the Town’s options upon expiration of the grant assurances in September 2021: (1) Negotiation of an agreement for mandatory restrictions on aircraft operators per [14 C.F.R. §§ 161.101, *et seq.*]; (2) Closure of the Airport after the grant assurances expire (September 2021) and the reopening of the airport; (3) Complete closure of the airport after the grant assurances expire (September 2021); or (4) Continue to operate the airport as a public use airport. See Exhibit 1.

25. In the November 2020 Letter, the FAA confirmed that closing HTO would “extinguish[]” the Town’s “FAA obligations” and authorize the Town to open “a private-use airport” using a prior permission required framework:

Option 2 considers that the federal grant assurances will expire after September 26, 2021 at which time the federal obligation to keep the airport open expires. The Town can close the airport, use the remaining funds in the airport account as it desires, dispose of the land, or not. ***The remaining FAA obligations, such as Exclusive Rights, Revenue Use, Civil Rights, are extinguished upon closure.*** The Town of East Hampton can then choose to change the use of the airport from public to private use.

The Town could also re-open as a traditional public-use airport or as ***a private-use airport made available to others by the Town through authorized rights or by requiring prior permission.*** A private-use airport would not be eligible for inclusion in the NPIAS or FAA funding. The Town would still need to comply with New York State private-use airport requirements and standards.

26. With the knowledge that the Town had FAA approval regarding the future of HTO,

the Town retained experts, prepared studies, and began outreach to the community to assess whether to keep the airport as is, modify the airport to mitigate the issues that had long plagued the community, or close the airport permanently. True and correct copies of the Town retained experts' studies and community outreach documents can be found here <https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro>. All of these documents informed the Town's process moving forward and, in one way or another, led the Town to the decision to close HTO and open a New Airport and thus these documents are all part of and incorporated as part of the administrative record supporting the Town's decision.

27. In 2021, the Town solicited reports from five different subject-matter experts, who advised the town on the potential environmental, economic, zoning, and noise effects of changes to HTO.

28. Also in 2021, the Town engaged SEQRA counsel to design a comprehensive study of environmental factors and help ensure compliance with SEQRA's procedural and substantive requirements.

29. The Town's economic consultants analyzed the financial impact of modifying operations at HTO, including by conducting two on-the-ground surveys geared toward determining how airport users would react if HTO were closed outright. The consultants concluded that, even if HTO were closed outright (which, to be clear, is far more extreme than the proposed 33-hour temporary closure), it would not meaningfully impact the Town financially. Attached hereto as **Exhibits 8-12** are true and correct copies of the Town's economic consultants' analyses of the financial impact of modifying operations at HTO. A recording of a public presentation by the economic consultant is located here: <https://www.youtube.com/watch?v=eJkJ4GUI-Ag>

30. The Town's environmental consultant assessed greenhouse gas emissions from aircraft utilizing HTO. The consultant determined that while aircraft at HTO are responsible for 6% of the Town's emissions, only 1% of the Town's residents use HTO. Attached hereto as **Exhibits 13-14** are true and correct copies of the Town's environmental consultant's findings for greenhouse gas emissions from aircrafts utilizing HTO. A recording of the environmental expert's public presentation is located here https://www.youtube.com/watch?v=agt_TZgwYJk.

31. The Town's aviation noise consultant conducted several separate analyses on possible diversion of flights to other airports, annual operational data, annual complaint data, and historical noise impacts. Attached hereto as **Exhibits 15-20** are true and correct copies of the Town's aviation noise consultant's findings. Recordings of public presentations made by the noise consultant are located here <https://www.youtube.com/watch?v=odV1yuYckU0> and here <https://www.youtube.com/watch?v=JmqqMtJS8-s>.

32. Through modeling analysis of known aircraft flight data, the aviation noise consultant concluded that charter helicopter operators have been largely uncooperative with the Town's voluntary noise abatement routes, choosing instead to fly directly overcrowded residential areas, sometimes at dangerously low altitudes (*e.g.*, 400 feet or lower directly above rooftops). The aviation noise consultant also found that operations had significantly increased when compared to operations that occurred in 2015.

33. The Town's zoning and planning consultant prepared a report demonstrating that, due to HTO's unusual location and proximity to East Hampton's main aquifer, HTO could, as needed, be converted for alternative non-airport uses that would benefit large portions of the community (*e.g.*, open recreational field space). Attached hereto as **Exhibit 21** is a true and correct copy of the Town's zoning consultant's prepared report.

34. The Town tasked its SEQRA counsel, Daniel A. Ruzow—nationally recognized for his 40 years of work with SEQRA and as one of the co-authors of the leading treatise on SEQRA, “Environmental Impact Review in New York” (Matthew Bender 2021)—to help the Town design a data-driven environmental study measuring potentially significant environmental impacts resulting from closing HTO and opening a private-use airport and the implementation of a suite of long-term controls to manage noise and other environmental impacts.

35. Mr. Ruzow advised that the Town should collect *actual* operations data as opposed to “tabletop” (*i.e.*, simulated) data, in order to most accurately study the environmental impact, if any, of the Town’s options for controlling operations at the New Airport when preparing a draft generic impact statement pursuant to SEQRA. In fact, the Town was already in the midst of completing a tabletop study and thus the only way to obtain better information than the Town already had would be through collection of actual data.

36. These expert studies discussed above coupled with updates and reports from the Town’s aviation counsel, Cooley LLP, culminated in ten public presentations between May and October 2021 and a series of four community engagement sessions in October 2021. Attached hereto as **Exhibits 22-42** are true and correct copies of the updates and reports provided by Cooley LLP. Recordings of some of the public presentations are located here:
<https://www.youtube.com/watch?v=8vYV5ZNiIAc>;
<https://www.youtube.com/watch?v=9sM5VxQwWXo>;
<https://www.youtube.com/watch?v=AGCHQhXygsQ>;

37. These community engagement sessions allowed every interested stakeholder to submit public comments on the future of HTO; interact and engage with fellow community members; and review the Town’s consultant reports in an open and communal setting. The Town

hired Lisa Liquori to organize and oversee the sessions. Ms. Liquori was also hired to summarize the community's feedback and present a report to the Town Board outlining the consensus view. It is my understanding that Ms. Liquori will be submitting her own declaration in this matter related to the community engagement sessions.

38. After reviewing all of the expert reports and understanding the community's views as set forth at the four community engagement sessions, the Town understood its mandate: pursue the closure-and-opening option recommended by the FAA, Option 2 as set forth in the November 2020 letter, so that the Town could sensibly regulate HTO in a manner that carefully balances community needs while retaining a safe and capable airport to serve aviation stakeholders.

39. Throughout this process, the Town has at all times worked closely with the FAA. I estimate that I have had no less than 10 calls with the FAA. On these calls, the FAA typically has more than 10 attendees (sometimes many more than that) from all different business units within the agency. It is my understanding that the Town's aviation counsel has had nearly daily calls with the FAA since the beginning of January 2022 and that the entire process of effectuating Option 2 has been a joint effort. Attached hereto as **Exhibits 43-61** are true and correct copies of the Town press releases outlining major milestones related to this process, including collaboration with the FAA.

40. On January 20, 2022, the Town filed two Form 7480-1s with the FAA— notifying the FAA that the Town planned to deactivate HTO on February 28, 2022 and open the New Airport on March 4, 2022. The Town chose these dates to ensure that the closure-and-opening process would disrupt aviation as little as possible. Attached hereto as **Exhibits 62-63** are true and correct copies of the two Form 7480-1s.

41. On January 21, 2022, the Town's aviation counsel provided the NYSDOT with the

Form 7480-1s that had been submitted to the FAA one day prior. It is my understanding that NYSDOT confirmed that it wanted to be kept apprised of the process but did not have a direct role in the process. It is my understanding that the Town's aviation counsel has consulted with NYSDOT on no less than six occasions since January 2022 regarding this process. It is my understanding that at no point has NYSDOT asked the Town to submit any forms, complete any processes, or otherwise do anything specific beyond send copies of the Form 7480-1s and keep NYSDOT updated.

42. The Town contacted NYSDOT prior to submitting any FAA filings to formally begin transitioning HTO and asked NYSDOT whether the Town should take any specific actions vis-à-vis NYSDOT throughout the localization process. It is my understanding that NYSDOT advised that so long as the Town follows FAA guidance and keeps NYSDOT apprised of progress, NYSDOT approved the Town simply working things through with the FAA. The Town has continued to update NYSDOT and has repeatedly confirmed that NYSDOT had no further requirements for state compliance. Attached hereto as **Exhibit 64-71** is a true and correct copy of the Town's Correspondence with the NYSDOT.

43. On February 2, 2022, the FAA sent the Town a letter outlining several issues the FAA was concerned about regarding its internal processes as it related to the Town's timing for deactivation and activation. All of these issues have since been addressed. Attached hereto as **Exhibit 72** is a true and correct copy of the February 2, 2022 FAA letter.

44. On February 16, 2022, the FAA suggested—and the Town agreed—that the Town postpone the deactivation of HTO from February until May. Attached hereto as **Exhibit 73** is a true and correct copy of the February 17, 2022 press release outlining this decision.

45. In the following weeks, the Town and FAA checked off each and every mandatory

item discussed in the FAA's February 2, 2022, letter, obtaining approval for: a private air traffic control tower at a private-use airport; a process to finalize agreements between the Town and FAA air traffic controllers; establishment of the Town's communication, navigational, and weather aids; and transfer of certain equipment to the Town, such as runway end identifier lights.

46. On March 18, 2022, the FAA completed its airspace analysis finding "no objection" to the Town's plan to activate the New Airport on May 19, 2022, at 09:00 am local time. Attached hereto as **Exhibit 74** is a true and correct copy of the March 18, 2022 letter of determination.

47. On March 22, 2022, the FAA completed its airspace analysis finding "no objection" to the Town's plan to deactivate HTO on May 17, 2022, at 11:59 pm local time. Attached hereto as **Exhibit 75** is a true and correct copy of the March 22, 2022 letter of determination.

48. The Town explained the significance of the airspace analyses in a press release on March 22, 2022. In short, once the airspace analyses were completed, the FAA had effectively given the Town's process full authorization and confirmed that no safety issues were associated with the New Airport. Attached hereto as **Exhibit 76** is a true and correct copy of the Town's Press Release dated March 22, 2022.

49. On March 24, 2022, the New Airport was assigned a new airport identifier, or "LocID." The FAA issued the identifier of "JPX." It is my understanding that this LocID can only be issued once the airport has been approved by the FAA. Attached hereto as **Exhibit 77** is a true and correct copy of the March 24, 2022 letter.

50. The Town is currently (at the time of this affidavit being filed with this Court) finalizing letter agreements with internal groups within FAA (e.g., air traffic controllers) and completing the transfer of equipment between the FAA and Town.

51. Based on discussions with the FAA, it is my understanding that all safety capabilities of HTO will be available at the New Airport upon opening on May 19, 2022.

52. It is my understanding, based on discussions with the FAA, that all operational capabilities of HTO will be available at the New Airport upon opening on May 19, 2022.

53. It is my understanding, based on discussions with the FAA, that the New Airport will be materially identical to HTO, but for the Town's new ability to legally exert local control consistent with federal law.

54. Regarding special instrument procedures—the private version of instrument procedures that are in place at HTO—the Town finalized and submitted its application package for special procedures to the FAA on March 24, 2022. The Town provided the special procedure application package to all known operators; to the sole FBO at HTO, Sound Aviation; published a press release; posted the application at HTO; and posted the application at Town Hall. Operators are currently submitting applications to seek authorization to use the special procedures. Attached hereto as **Exhibit 78-79** are true and correct copies of the published press release and the special procedure application package.

55. In parallel with expert work, community engagement, and collaboration with the FAA, the Town has overseen a comprehensive, transparent SEQRA analysis. It is my understanding that SEQRA requires the Town to take a “hard look” at actions it is contemplating to assess whether such action may have a significant adverse environmental impact. Attached hereto as **Exhibits 80-85** are true and correct copies of the Town's airport-related SEQRA Documents.

56. On January 20, 2022, prior to the Town notifying the FAA that the Town would pursue the transitional plan outlined in the November 2020 Letter, the Town issued a resolution

reflecting its first important SEQRA determination. Attached hereto as **Exhibit 86** is a true and correct copy of the Town's Press Release dated January 20, 2022.

57. The Town adopted its resolution containing its "negative declaration" regarding the closure of HTO and attached supporting environmental assessment forms and supplemental narratives. Attached hereto as **Exhibit 87** is a true and correct copy of the negative declaration (Resolution 2022-190) dated January 20, 2022.

58. In the same resolution (2022-190), the Town also noted its intent to adopt a "positive declaration" to "examine the environmental, economic and social effects of potential changes to future operation of" the New Airport and directed its environmental consultants to prepare a positive declaration and draft scoping outline for a draft generic environmental impact statement.

59. The Town determined that the most prudent path to comply with SEQRA is to collect actual data reflecting the actual impact (if any) of noise, environmental, and safety regulations adopted at the New Airport.

60. Actual data is presently unavailable as a direct result of HTO being public use: the Town has no ability to implement access restrictions or otherwise exert local control and thus the Town had to convert HTO to a private use airport before it could meaningfully engage in a SEQRA analysis of the long term operation of the New Airport.

61. From the outset, the Town has committed to conduct a full generic environmental impact statement (or "GEIS"), the most exhaustive outcome contemplated by SEQRA. On February 17, 2022, the Town adopted another SEQRA resolution (Resolution 2022-299) containing its Positive Declaration and Draft Scoping Outline for preparation of a Draft Generic Environmental Impact Statement for Consideration of Long-Term Operational Changes at the New

Airport. It also scheduled a public scoping meeting for March 1, 2022 and announced a public comment period that would extend to March 18, 2022, for submission of written comments on the Draft Scoping Outline. Attached hereto as **Exhibit 88** is a true and correct copy of Resolution 2022-299.

62. This resolution (2022-299) reiterated that, once the Town had closed HTO and opened the New Airport (and in so doing obtained access to reliable data), the Town would “study the impact of operational restrictions designed to minimize and/or avoid longstanding noise, environmental, safety, and other impacts.”

63. On March 3, 2022, the Town issued a supplemental resolution (Resolution 2022-342) amending its January 20, 2022, SEQRA Negative Declaration (Resolution 2022-299) in connection with the changes dates for closing HTO and opening the New Airport as requested by the FAA. The amended Negative Declaration was accompanied by a supplemental Environmental Assessment Form and Narrative considering the potential effects of the new closure date of May 17, 2022, and New Airport opening 33 hours later on May 19, 2022. Attached hereto as **Exhibit 89** is a true and correct copy of Resolution 2022-342.

64. In adopting Resolution 2022-342, the Town Board determined that the closure of HTO and opening of the New Airport with no changes in operational control did not commit the Town Board to any particular future course of action that would affect the environment. Thus, the Town Board determined that the closure-and-opening process would not itself have significant environmental impacts, and that environmental review of the transition from a public to a private airport could be segmented from the later determination of what operational limitations, if any, would be imposed. The Town Board likewise reasoned that such an approach would be no less protective of the environment within the meaning of SEQRA, given that the Town would be

undertaking a full SEQRA DGEIS process prior to the implementation of any operational changes.

65. Specifically, the Town Board found:

WHEREAS, while a decision to close the public use Airport and open a private use New Airport under FAA rules is a discretionary action of the Town and therefore requires consideration of potential impacts under SEQRA, it is also a purely administrative step and it does not commit the Town to a future course of actions that will affect the environment, but instead provides greater autonomy for the Town's operational authority. After careful study, the Town Board believes that opening a private use New Airport will not in and of itself have any significant adverse environmental effects and can be permissibly segmented from the consideration of any long-term operational changes which will be evaluated in the DGEIS as set forth in 6 NYCRR §617.3(g)(1). Such authority over airport operations serves an independent function or utility from whatever future restrictions or controls are determined appropriate by the Town Board after the Final GEIS is available and SEQRA Findings issued. Both the January Determination (and its supporting environmental analysis) and the supplemental environmental analysis presented in Appendix A hereto carefully considered whether closing the Airport and opening a New Airport as outlined in the FAA's November 2020 letter would potentially have a significant adverse impact on the environment and concluded any effects would be minor and temporary. Coupled with the adoption of a Positive Declaration to examine the environmental, economic and social effects of potential changes to future operation of the New Airport, such permissible segmentation under SEQRA is no less protective of the environment.

Given the facts presented here, I respectfully submit that this determination is well within the Town Board's discretion and neither arbitrary nor capricious.

66. As with all aspects of the Town's process, the Town's SEQRA study has prioritized transparency and public involvement. The Town invited public comment on the proposed "scope" of its environmental analysis and has dutifully reviewed these comments as they have arrived. Attached hereto as **Exhibits 90-91** are true and correct copies of the Town's draft scoping outline.

67. On March 8, 2022, the Town issued a press release urging continued public participation before the comment period closed on March 18, 2022. Attached hereto as **Exhibit**

92 is a true and correct copy of the March 8, 2022 Press Release.

68. Approximately 500 comments were submitted in response to the Draft Scoping Outline. The wide variety of viewpoints reflected in the comments that were submitted reflect the investment, interest, and passion of the community and all stakeholders in the Town's public SEQRA process.

69. Notably, many of the comments have indicated that while the current unrestricted public-use regime at HTO cannot continue, the Town should go much further in limiting access at the New Airport or perhaps not open the New Airport at all.

70. For example, Amy B. stated "For more than 25 years I have summered in Wainscott where I built a house for my family and where I vote. When we first came, the occasional airplane overhead presented no challenge to the rest, recreation, and natural beauty that attracted us. Over the years, however, the extraordinary increase in the volume of air traffic, and especially helicopters, has progressively robbed us of the tranquility, the peace, and the quiet that drew us to Wainscott. For the last several summers, . . . the clangor of helicopters and the roar of jets, have constantly interrupted the simple pleasures of conversation with friends on the terrace (or even indoors), strolls in the garden, and sailing on Georgica Pond. The call of bird song and the whisper of the sea breeze are regularly drowned out. Phone calls are interrupted. The furniture is rattled. And so are our nerves. . . . There is *no* acceptable route to [a new airport]." Attached hereto as **Exhibit 93** is a true and correct copy of the correspondence.

71. Patricia C. stated "Your desire to cause as little disruption as possible to the aviation industry when the airport closes in May indicates that the . . . aviation industry remain[s] in firm control of East Hampton Airport, private or public, with or without grant assurances. That is profoundly disturbing. . . . [The] proposed limit of one roundtrip per aircraft per day ignores the

well-known fact that operators with business models like BLADE have at their disposal within the tri-state area, entire fleets of rotor and fixed-wing aircraft available on short notice, so can easily avoid this restriction. . . . [Keeping the airport open] will not: lessen safety concerns, or prevent reckless flights at low-altitudes above our homes; prevent continued erosion of our already severely diminished quality of life; prevent threats to the health of our air quality and fragile environment, specifically our ground and surface waters, farm fields, outdoor recreational areas, and precious parks, playgrounds, and nature reserves; [or] lessen toxic emissions that exact a heavy toll on the planet, the public health and imperil the future of our children.” Attached hereto as **Exhibit 94** is a true and correct copy of the correspondence.

72. Lynn C. and Howard F. stated “The environmental impact of the airport is catastrophic. The threat to our aquifer, the air quality, the health of our ponds and farmland, and our own humble vegetable gardens all lead to the conclusion that we are rapidly destroying our natural resources. This is a problem now, not something that may occur in the future. The airport is a huge polluter that is, frankly, unnecessary.” Attached hereto as **Exhibit 95** is a true and correct copy of the correspondence.

73. Sheryl G. stated “I ask the Town to consider: (1) Prohibiting the sale of aviation fuel and the sale and use of leaded fuel, effective immediately . . . ; (2) Banning all helicopters, commercial and private; (3) Banning all jets . . . ; (4) Banning all piston planes; [and] (5) Banning all seaplanes. . . . [T]he only responsible action is to permanently CLOSE THE AIRPORT.” Attached hereto as **Exhibit 96** is a true and correct copy of the correspondence.

74. Lyle G. stated “From all that I’ve read the recommendations . . . are mere tweaks intended to mollify those who insisted the airport should be closed entirely. . . . The purpose of privatizing the airport is to allow community regulation of its use. And the purpose of the initial

restrictions being placed on that use should be meaningful enough . . . to provide genuine relief for residents who've been pleading for strong measures for the past two decades. Please consider taking a hard look at the proposals on the table. They need to be far stronger." Attached hereto as **Exhibit 97** is a true and correct copy of the correspondence.

75. Anthony L. stated "The Pro Airport community has shown no interest in compromise or any reduction in activity. On the contrary, through their words and litigious actions it is clear they will defend the . . . uninhibited ability to increase flights. I am personally in favor of outright closure or at a minimum, an outright ban of helicopter and jets of any size." Attached hereto as **Exhibit 98** is a true and correct copy of the correspondence.

76. The full set of comments regarding the Draft Scoping Outline will be publicly available in early April 2022 when the final scoping outline is prepared and presented.

77. On March 8, 2022, the Town proposed amendments to Chapter 75 of the Town Code, which relates to "Airports," so that the Town Code reflected a private-use airport. Attached hereto as **Exhibit 99** is a true and correct copy of the proposed amendments to Chapter 75 of the Town Code.

78. The Town also submitted proposed rules and regulations to govern the New Airport that included proposed new landing fees. Attached hereto as **Exhibit 100** is a true and correct copy of the proposed rules and regulations.

79. It remains the case, and the Town has repeatedly stated, that the Town is pursuing this airport process with a goal of disrupting aviation as little as possible or, hopefully, not at all. Attached hereto as **Exhibit 101-104** are true and correct copies of pertinent Press Releases and Letters.

80. Since the beginning of 2021, the Town has had more than 15 public work sessions

dedicated to the airport in some capacity, issued numerous press releases, passed several resolutions, and engaged in public discourse regarding the future of HTO. All of these materials are available on the Town's website, www.ehamptonny.gov. Historical documents regarding the airport and the 2015 Local Laws are available at www.htoplanning.com.

81. The Town's SEQRA process related to the airport remains ongoing. I expect many developments to occur over the next several months. All of these aspects will be part of a public process and any materials or documents will be available on the Town's website. All of those documents are pertinent to this Court's decision making.

82. Finally, I am aware that Petitioners claim that HTO has federal contractual obligations that require it to be used as a public use airport indefinitely. It is my understanding that HTO is not subject to War Asset Administration or Surplus Property Act obligations. This is confirmed by reviewing the FAA's most recent "List of Public Airports Affected by Agreements with the Federal Government." Attached hereto as **Exhibit 105** is a true and correct copy of the List of Public Airports Affected by Agreements with the Federal Government. In this FAA document, it is my understanding that HTO is designated as being "affected" by the following agreements: "G/V/Y." (See section 5, pdf page 25.) As described on page 7 of the same document, "G" means that the airport has a "grant agreement"; "V" means the airport has an "advance planning agreement"; and "Y" means the airport has a Civil Rights Act assurance. It is my understanding that if HTO had any surplus property or war asset administration obligations, including a reversionary interest, HTO would be "affected" by an agreement denoted with a "P," "R," or "3." The "P" denotes a "surplus property agreement under public law 80-289 (real property only)," an "R" denotes "surplus property agreement under Regulation 16-WAA" (the WAA is "War Asset Administration"), and a "3" denotes an "AP-4 agreement" which typically

accompanied an WAA grant. Therefore, it is my understanding that the absence of a “P,” “R,” or “3” confirms that no reversionary interest applies to HTO. To my understanding, this means that HTO has no perpetual federal contractual obligations, such as a right of reverter. This is consistent with my understanding that the Town owns HTO outright and consistent with the FAA offering “no objection” to the Town’s plan to close HTO and open the New Airport.

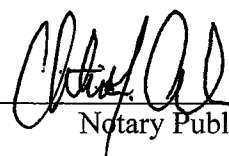
83. Looking forward at what is to come for the SEQRA process leading up to the final generic impact statement, the Town will: (1) evaluate and address the comments on the Draft Scoping Outline; (2) in April 2022, issue a Final Draft Scope and methodology memorandum; (3) in summer 2022, study and monitor the effects of a provisional set of PPR limitations; (4) in early fall 2022, complete a Draft GEIS; (5) in late fall 2022, hold a public hearing and invite comments; and (6) finally, that winter, address public comments, prepare a Final GEIS, and issue a statement of findings summarizing all environmental impacts, mitigation, and reasoning for a decision on whether and how to implement any of the PPR measures provisionally studied during the 2022 summer busy season.

84. Attached hereto as **Appendix 1** is a complete Index of Exhibits cited in this affidavit.



PETER VAN SCOYOC

Sworn to before me on this 4th day of April, 2022



Notary Public

CHRISTINA M. ARKINSON
Notary Public, State of New York
No. 01AR6112098
Qualified in Suffolk County
Commission Expires June 28, 2022

CERTIFICATION OF COMPLIANCE WITH UNIFORM CIVIL RULE 202.8-b

I hereby certify the foregoing Affidavit of Peter Van Scoyoc exclusive of caption and signature block comprises of 6,686 words, and the complies with the Uniform Civil Rule 202.8-b.

Dated: April 4, 2022
New York, New York

Respectfully submitted,

COOLEY LLP

By: /s/ Philip M. Bowman
Philip M. Bowman, Esq.
55 Hudson Yards
New York, New York 10001
Phone: (212) 479-6000
pbowman@cooley.com

William V. O'Connor, Esq.*
Cooley LLP
4401 Eastgate Mall
San Diego, CA 92121
Phone: (858) 550-6000
Fax: (858) 550-6420
woconnor@cooley.com

Andrew D. Barr, Esq.*
Cooley LLP
1144 15th Street, Suite 2300
Denver, CO 80202
Phone: (720) 566-4000
Fax: (720) 566-4099
abarr@cooley.com

Adam M. Katz, Esq.
Cooley LLP
500 Boylston St.,
Boston, MA 02116
Phone: (617) 937-2300
Fax: (617) 937-2400
akatz@cooley.com

Dan Ruzow

druzow@woh.com

John Henry

jhenry@woh.com

Christopher McDonald

cmcdonald@woh.com

**WHITEMAN OSTERMAN & HANNA
LLP**

One Commerce Plaza, 19th Floor
Albany, NY 12260

Nicholas Rigano

538 Broadhollow Rd

Melville, NY 11747

Phone: (631) 756-5900

nrigano@riganollc.com

RIGANO LLC

**pro hac vice admission*

*Attorneys for Respondent Town of East
Hampton, New York*

APPENDIX 1

EXHIBIT NO.	DESCRIPTION
EXHIBIT 1	FAA letter dated November 6, 2020, which can also be found here https://ehamptonny.gov/DocumentCenter/View/9566/FAA-November-6-2020-Letter-to-Town-Supervisor-regarding-options-for-the-East-Hampton-Airport-after-grant-assurances-expire
EXHIBIT 2	Full list of grant assurances accepted by the Town, which can also be found here http://ehamptonny.gov/DocumentCenter/View/1244/Chapter-1-and-2-PDF?bidId=
EXHIBIT 3	<i>Committee to Stop Airport Expansion v. FAA</i> , 320 F.3d 285, which can also be found here https://casetext.com/case/committee-to-stop-airport-expansion-v-faa .
EXHIBIT 4	2005 Settlement in the <i>Committee to Stop Airport Expansion v. FAA</i> , 320 F.3d 285, which can also be found here https://img1.wsimg.com/blobby/go/bcc85ef4-de80-4658-b17e-8069c9c8182e/downloads/150129%20(FOEH%20v.%20FAA)%20Complaint.PDF?ver=1609266652766
EXHIBIT 5	Rep. Tim Bishop Letter, which can also be found here https://img1.wsimg.com/blobby/go/bcc85ef4-de80-4658-b17e-8069c9c8182e/downloads/140229%20FAA%20Response%20to%20Rep%20%20Tim%20Bishop%20re%20East.PDF?ver=1609266652775
EXHIBIT 6	Town of East Hampton Code, which can also be found here https://ecode360.com/30577208
EXHIBIT 7	Presentation prepared by aviation counsel Cooley LLP for the Town of East Hampton dated October 19, 2021, which can also be found here https://ehamptonny.gov/DocumentCenter/View/10285/10192021-HTO-Legal-Update-Post-Grant-Assurances---Cooley?bidId=
EXHIBIT 8	HTO Economic Impact Analysis Full Presentation dated May 11, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 9	HTO Economic Impact Analysis Full Presentation dated October 15, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 10	HTO Economic Impact Analysis Summary Presentation dated May 11, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 11	HTO Economic Impact Analysis Summary Presentation dated October 15, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro

EXHIBIT 12	HTO Impact Model Assumptions and Outputs, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 13	DW East Hampton presentation July 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 14	East Hampton - Environmental Report, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 15	HMMH Work Authorization to assist the Town of East Hampton dated January 28, 2020
EXHIBIT 16	HMMH Presentation dated May 11, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 17	Review of Jet Operations and Complaints dated May 13, 2020, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 18	HMMH HTO Shoulder 2019 2020 Results 1, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 19	A Feasibility Study of Diverting Aircraft Operations at East Hampton Airport dated September 7, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 20	A Feasibility Study of Diverting Aircraft Operations at East Hampton Airport dated September 6, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 21	Town's zoning consultant's prepared report dated August 3, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 22	2020 Airport Board Meetings
EXHIBIT 23	2020 Airport Resolutions
EXHIBIT 24	Town of East Hampton Town Board Meeting on February 11, 2020
EXHIBIT 25	Town of East Hampton Town Board Meeting on April 14, 2020
EXHIBIT 26	2021 Airport Board Meetings
EXHIBIT 27	2021 Airport Resolutions
EXHIBIT 28	Town of East Hampton Town Board Meeting on January 7, 2021
EXHIBIT 29	Cooley presentation re East Hampton Airport Update dated May 11, 2021, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 30	Town of East Hampton Town Board Meeting on May 11, 2021
EXHIBIT 31	Town of East Hampton Town Board Meeting on July 6, 2021
EXHIBIT 32	Town of East Hampton Town Board Meeting on October 12, 2021
EXHIBIT 33	Cooley presentation re HTO After Expiration of FAA Grant Assurances, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro

EXHIBIT 34	Town of East Hampton Town Board Meeting on November 9, 2021
EXHIBIT 35	Town of East Hampton Town Board Meeting on December 21, 2021
EXHIBIT 36	2022 Airport Board Meetings
EXHIBIT 37	2022 Airport Resolutions
EXHIBIT 38	Town of East Hampton Town Board Meeting on January 18, 2022
EXHIBIT 39	Town of East Hampton Town Board Meeting on February 11, 2022
EXHIBIT 40	Town of East Hampton Town Board Meeting on February 15, 2022
EXHIBIT 41	Town of East Hampton Town Board Meeting on March 1, 2022
EXHIBIT 42	Town of East Hampton Town Board Meeting on March 8, 2020
EXHIBIT 43	Town of East Hampton Press Release dated August 3, 2020
EXHIBIT 44	Town of East Hampton Press Release dated October 19, 2020
EXHIBIT 45	Town of East Hampton Press Release dated April 30, 2021
EXHIBIT 46	Town of East Hampton Press Release dated June 28, 2021
EXHIBIT 47	Town of East Hampton Press Release dated August 17, 2022
EXHIBIT 48	Town of East Hampton Press Release dated August 23, 2021
EXHIBIT 49	Town of East Hampton Press Release dated October 11, 2021
EXHIBIT 50	Town of East Hampton Press Release dated January 18, 2022
EXHIBIT 51	Town of East Hampton Press Release dated January 20, 2022
EXHIBIT 52	Town of East Hampton Press Release dated February 3, 2022
EXHIBIT 53	Town of East Hampton Press Release dated February 17, 2022
EXHIBIT 54	Town of East Hampton Press Release dated February 18, 2022
EXHIBIT 55	Town of East Hampton Press Release dated February 24, 2022
EXHIBIT 56	Town of East Hampton Press Release dated March 8, 2022
EXHIBIT 57	Town of East Hampton Press Release dated March 22, 2022
EXHIBIT 58	Town of East Hampton Press Release dated March 23, 2022
EXHIBIT 59	Town of East Hampton Press Release dated March 24, 2022
EXHIBIT 60	Town of East Hampton Press Release dated March 28, 2022
EXHIBIT 61	Town of East Hampton Press Release dated March 29, 2022
EXHIBIT 62	Form 7480-1 dated January 20, 2021 re Activation of New Airport
EXHIBIT 63	Form 7480-1 dated January 20, 2021 re Deactivation of East Hampton Airport
EXHIBIT 64	Correspondence between The Town of East Hampton and NYSDOT dated January 12, 2022
EXHIBIT 65	Correspondence between The Town of East Hampton and NYSDOT dated January 21, 2022
EXHIBIT 66	Correspondence between The Town of East Hampton and NYSDOT dated February 2, 2022
EXHIBIT 67	Correspondence between The Town of East Hampton and NYSDOT dated February 4, 2022

EXHIBIT 68	Correspondence between The Town of East Hampton and NYSDOT dated February 17, 2022
EXHIBIT 69	Correspondence between The Town of East Hampton and NYSDOT dated March 15, 2022
EXHIBIT 70	Correspondence between The Town of East Hampton and NYSDOT dated March 22, 2022
EXHIBIT 71	Correspondence between The Town of East Hampton and NYSDOT dated March 29, 2022
EXHIBIT 72	FAA letter February 2, 2022
EXHIBIT 73	Town of East Hampton Press Release dated February 17, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11750/Press-Release---Delay-of-Deactivation-of-EH-Airport-Feb-2022
EXHIBIT 74	FAA Notice of Airport Airspace Determination re East Hampton Airport Deactivation dated March 18, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/12013/FAA-Notice-of-Airport-Airspace-Determination-re-East-Hampton-Town-Airport-New-Private-Use-Airport-Activation-2022-03-22
EXHIBIT 75	FAA Notice of Airport Airspace Determination re East Hampton Airport Deactivation dated March 22, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/12014/FAA-Notice-of-Airport-Airspace-Determination-re-East-Hampton-Airport-Deactivation-2022-03-22
EXHIBIT 76	Town of East Hampton Press Release dated March 22, 2022, which can also be found here http://ehamptonny.gov/DocumentCenter/View/12017/airport-pr-rel-March-22-2022-final-draft
EXHIBIT 77	FAA letter dated March 24, 2022 re assigning location Identifier for EH Town Airport JPX, which can also be found here https://ehamptonny.gov/DocumentCenter/View/12071/FAA-Letter-Assigning-Location-Identifier-for-EH-Town-Airport-JPX
EXHIBIT 78	Town of East Hampton Press Release dated March 22, 2022, which can also be found here http://ehamptonny.gov/DocumentCenter/View/12017/airport-pr-rel-March-22-2022-final-draft
EXHIBIT 79	Town of East Hampton Special Procedures letter dated March 28, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/12070/Special-Procedures-Ltr-Signed-3-28-2022
EXHIBIT 80	Airport Scoping East Hampton Town Board Work Session dated March 1, 2022, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making ;
EXHIBIT 81	DGEIS Scoping Session Presentation dated March 1, 2022, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making

EXHIBIT 82	Appendix A to Draft Airport SEQRA Resolution - FEAF Parts I,II,III Supplemental Amended Action, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making
EXHIBIT 83	DGEIS Scoping Document Outline, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making
EXHIBIT 84	Full Environmental Assessment Form Parts I, II, and III, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making
EXHIBIT 85	Supplemental Narrative for FEAF Parts II and III, which can also be found here https://ehamptonny.gov/786/2022-Airport-News-and-Decision-Making
EXHIBIT 86	Town of East Hampton Press Release dated January 20, 2022, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 87	Resolution 2022-190 dated January 20, 2022, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 88	Resolution 2022-299 dated February 17, 2022, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 89	Resolution 2022-342 dated March 3, 2022, which can also be found here https://ehamptonny.gov/748/2020-and-2021-Airport-Re-envisioning-Pro
EXHIBIT 90	Airport Scoping East Hampton Town Board Work Session dated March 1, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/12066/Airport-SEQRA-Scoping-Session-held-March-1-2022
EXHIBIT 91	Draft Scoping Outline for SEQRA Positive Declaration for East Hampton Airport Operational Changes, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11736/Appendix-C---EHA-Op-Changes-Draft-Scoping-Outline
EXHIBIT 92	Town of East Hampton Press Release dated March 8, 2022
EXHIBIT 93	Comment from Amy B. shared during the Town's public SEQRA process
EXHIBIT 94	Comment from Patricia C. shared during the Town's public SEQRA process
EXHIBIT 95	Comment from Lynn C. and Howard F. shared during the Town's public SEQRA process
EXHIBIT 96	Comment from Sheryl G. shared during the Town's public SEQRA process
EXHIBIT 97	Comment from Lily G. shared during the Town's public SEQRA process
EXHIBIT 98	Comment from Anthony L. shared during the Town's public SEQRA process
EXHIBIT 99	Town of East Hampton proposed amendments to Chapter 75, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11898/Proposed-Amendment-to-Town-Code-Ch-75-3722
EXHIBIT 100	Town of East Hampton proposed rules and regulations, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11897/New-Airport-Proposed-Rules-and-Regulations-3722

EXHIBIT 101	Town of East Hampton Press Release dated January 18, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11421/EH-Airport-pr-rel-Jan-18-2022-final
EXHIBIT 102	Town of East Hampton Press Release dated January 20, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11426/Press-Release---East-Hampton-Airport-Jan-2022
EXHIBIT 103	Town of East Hampton Press Release dated February 17, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11750/Press-Release---Delay-of-Deactivation-of-EH-Airport-Feb-2022
EXHIBIT 104	Town of East Hampton Press Release dated February 18, 2022, which can also be found here https://ehamptonny.gov/DocumentCenter/View/11609/Frequently-Asked-Questions--East-Hampton-Airport--Feb-18-2022?bidId=
EXHIBIT 105	List of Public Airports Affected by Agreements with the Federal Government, which can also be found here https://www.faa.gov/documentLibrary/media/Order/5190.2R.pdf

Exhibit 34

9. Resolution 2022-560

Category: Local Law
Sponsors: Supervisor Peter Van Scoyoc
Department: Town Attorney

Adopt Local Law Amending Chapter 75 (Airport) Of the East Hampton Town Code

WHEREAS, the Town Board of the Town of East Hampton held a public hearing on April 7, 2022 to consider an amendment to Chapter 75 (Airport) of the Town Code to better suit the Town's opening of a private use Airport at the location of the prior public use Airport in Wainscott, Town of East Hampton, and

WHEREAS, the Town Board, after considering the proposed local law and the comments submitted with regard to the same, believes that adoption of the proposed local law is in the best interests of the Town of East Hampton; and

WHEREAS, said local law amendment is a Type II action pursuant to Chapter 128 (Environmental Quality Review- §128-3-30 A.(9) & (16)) of the Town Code and the New York State Environmental Quality Review Act (SEQRA- 6 NYCRR §617.5(c)(26)) and exempt from environmental review; now, therefore, be it

RESOLVED, that the Town Board hereby adopts the proposed local law to read as follows:

A LOCAL LAW amending Chapter 75 (Airport) of the East Hampton Town Code", said local law read as follows:

Intro. # 11 of 2022
Local Law # 11 of 2022

Section 1. Town Code Amended.

Section 75 (Airport) for the Town Code of the Code of the Town of East Hampton is hereby amended to read in its entirety as follows:

CHAPTER 75 AIRPORT

ARTICLE I **Operations**

§ 75-1. The East Hampton Town Airport is a Publicly Owned, Private Use Airport.

- A. The Town Airport is a publicly owned, private use airport. Before an aircraft may takeoff or land at the Town Airport, the Town Board must provide permission for such takeoff or landing.
- B. Permission to operate at the Town Airport is governed by the Town Airport's Rules and Regulations.
- C. Military, public, and emergency aircraft operations are always permitted at the Town Airport.
- D. For purposes of this Chapter:
 - i. "Operation" means a takeoff or a landing.
 - ii. "Person" means the pilot, owner of the aircraft, and operator of the aircraft. If an aircraft has multiple owners, each owner is considered a "Person" for purposes of this Chapter. A Person includes individuals as well as entities.
 - iii. "Town Airport" means all airports, heliports, seaports, or other locations designated for aircraft takeoffs and landings that are under the control of, or owned by, the Town of East Hampton.

§ 75-2. Compliance With Rules and Regulations Required.

- A. The Town Board has established Rules and Regulations to govern all operations at the Town Airport. The Rules and Regulations have the force of law and all operations must be in compliance with the Rules and Regulations.
- B. Any Person who operates an aircraft at the Town Airport shall comply with the Rules and Regulations, all federal laws, the Federal Aviation Administration's (FAA) rules and regulations, the provisions of this Chapter, and all other applicable laws and regulations.
- C. Failure to comply with this Chapter or the Rules and Regulations subject the violating Person to the penalties set forth in this Chapter and in the Rules and Regulations.
- D. A copy of the Rules and Regulations can be obtained on the Town's website, at the Airport Director's office at the Town Airport, and at the Town Clerk's office at Town Hall. The Town Board may revise the Rules and Regulations from time to time by duly adopted Resolution.

§ 75-3. Powers and Duties of the Airport Director.

- A. The Airport Director, acting as the agent of the Town Board, is hereby charged with the responsibility of maintaining the safe and orderly operation of the Town Airport, and enforcing the provisions of this Chapter and the Rules and Regulations as adopted by the Town Board and as amended from time to time.
- B. In furtherance of his or her duty, the Airport Director shall have the authority to temporarily or permanently prohibit a Person from operating at the Town Airport, as set forth in this Chapter.
- C. The Airport Director may order any person to cease and desist any activities or conduct that violates the Rules and Regulations. The Airport Director may also order any person who knowingly fails to comply with a cease and desist order to be removed from or denied access to the Town Airport.
- D. Any Person denied the use of the Town Airport by the Airport Director for a period in excess of 180 days may appeal the decision of the Airport Director to the Town Board. The Town Board, or their designee, shall hear said appeal, and upon the findings of the Town Board, or, should the Town Board designate a hearing officer, upon review of the findings and recommendation of the hearing officer, the Town Board may rescind or confirm the decision of the Airport Director.
- E. The Town Board has the right to prohibit temporarily or permanently the use of the Town Airport to any Person who, in its judgment, violates this Chapter, the Rules and Regulations, or otherwise constitutes a threat to the safe and orderly operation of the Town Airport.
- F. The Airport Director may, on his or her own or through Town law enforcement, or a contractor retained for such purpose, immobilize an aircraft or vehicle by installing on the aircraft a propeller lock, on a vehicle a wheel lock, or by such other suitable means under any of the following circumstances:
 - i. Failure of a Person associated with the aircraft to remit all fees and charges due to the Town in a timely manner; or
 - ii. If, in the determination of the Airport Director, the aircraft or vehicle presents an operational or safety concern in any area of the Town Airport, or otherwise constitutes a danger to the health, safety, or welfare of any individual or the public in general, and until such time as the aircraft or vehicle no longer presents such health, safety or welfare concerns; or
 - iii. Repeated or willful violation of the Rules and Regulations or the Town Code.

§ 75-4. Effect of Fee or Penalty.

Any fee or penalty, including a suspension, imposed pursuant to this Chapter or the Rules and Regulations adopted pursuant thereto shall be deemed to apply to the Person charged, or to any shareholder, member, or partner of any entity charged, and the fee or penalty shall apply and continue regardless of whether the suspended party commences work for a different entity, or the shareholder(s), member(s) or partner(s) of the entity charged, or any one or more of them, form a new entity to operate under.

§ 75-5. Penalties for offenses.

- A. A violation of this Chapter, or the Rules and Regulations adopted pursuant thereto, shall be punishable against any person, organization, corporation, group or other entity who has control over an aircraft that violates this Chapter or the Rules and Regulations, including but not limited to the pilot, aircraft owner, and/or aircraft operator, as follows:
- i). For a first offense, by a fine of not less than \$1,000.00 nor more than \$5,000.00;
 - ii). For a second or subsequent violation of any section of this chapter within an five (5) year period is hereby declared to be an offense punishable by a fine not less than \$5,000 nor more than \$30,000 or imprisonment not to exceed a period of 14 days, or both.
- B. Each continuing day of violation of this Chapter, or of the Rules and Regulations adopted pursuant thereto, shall constitute a separate offense.
- C. In addition to the penalties set forth in this section, any person, organization, corporation, group or other entity convicted of two (2) or more violations of this Chapter, or the Rules and Regulations adopted pursuant thereto, within five (5) years be suspended from use of the Airport for a period of not more than two years.
- D. Any person, organization, corporation, group or other entity entering upon Town Airport property in violation of this Chapter, or the Rules and Regulations adopted pursuant thereto, or in violation of any condition of approval for entry imposed by the Town, may be charged with and prosecuted for trespass.
- E. In addition to the above penalties, the Town may commence a civil action or proceeding in the name of the Town in a court of competent jurisdiction to compel compliance with or to restrain by injunction any violation of this Chapter and/or the Rules and Regulations adopted pursuant thereto, by any person, organization, corporation, group or other entity violating the same or holding an ownership interest in the individual aircraft involved in the violation. If a finding is made by a court of competent jurisdiction that the defendants, or any of them, have caused, permitted, or allowed a violation of this Chapter, or the Rules and Regulations adopted pursuant thereto, a penalty to be jointly and severally included in the judgment may be awarded at the discretion of the court in an amount not to exceed \$5,000 for each day it is found that the defendants, or any one of them, individually, collectively, or in conjunction with other(s) caused, permitted or allowed the violation.
- F. Nothing set forth in his section shall be deemed to limit or restrict the Airport Manager's right to suspend any person organization, corporation, group or other entity based upon other provisions of this Chapter and/or the Rules and Regulations.

§ 75-6. Repealer.

Upon the effective date of this local law, the preexisting ordinance entitled "Airport" at Chapter 75 of the Town Code shall be repealed.

§ 75-7. Severability.

If any section or subdivision, paragraph, clause or phrase of this law shall be adjudged invalid, unenforceable, or unconstitutional by any order or judgment of a court of competent jurisdiction, or pursuant to any order of any administrative agency having jurisdiction, whether such judgment or order is

temporary or permanent, such judgment or order shall not affect the validity of this law as a whole or any part thereof other than the part or provision

§ 75-8. Effective Immediately.

This local law shall take effect immediately upon filing with the Secretary of State as provided for by law.

SECTION 2. Authority.

The Town Board is authorized to establish and promulgate rules and regulations regarding use of the East Hampton Airport pursuant to Municipal Home Rule Law §10(1)(ii)(a)(6) and (12) and Town Law §130 and §135 and pursuant to its powers as the proprietor of private use Airport at East Hampton.

SECTION 3. Effective Date.

This local law shall take effect upon filing with the Secretary of State.

RESOLVED, that the Town Clerk is hereby directed and authorized to file the local law with the New York State Secretary of State.

DATED: April 21, 2022

BY ORDER OF THE TOWN BOARD
TOWN OF EAST HAMPTON, NEW YORK
CAROLE A. BRENNAN
TOWN CLERK

✓ Vote Record - Resolution RES-2022-560						
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Adopted as Amended <input type="checkbox"/> Defeated <input type="checkbox"/> Tabled <input type="checkbox"/> Withdrawn			Yes/Aye	No/Nay	Abstain	Absent
	Kathee Burke-Gonzalez	Voter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	David Lys	Voter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Sylvia Overby	Seconder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Cate Rogers	Voter	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Peter Van Scoyoc	Mover	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Exhibit 35

RESOLUTION: 2022-630
CATEGORY: Local Law
SPONSORED BY: Supervisor Peter Van Scoyoc
DEPARTMENT: Town Attorney

Adopt Rules & Regulations for Use of East Hampton Airport JPX

WHEREAS, by Resolution 2022-560 dated April 21, 2022, the Town Board of the Town of East Hampton adopted a local law amending Chapter 75 (Airport) of the Town Code; and

WHEREAS, the amendment to Chapter 75 provides that the Town Board will adopt Rules & Regulations for the use of the new private use Airport at the location of the prior public use Airport in Wainscott, Town of East Hampton which is scheduled to close May 17, 2022, and

WHEREAS, the adoption of the proposed Rules & Regulations is a Type II action pursuant to Chapter 128 (Environmental Quality Review) §128-3-30 A.(9) & (16) of the Town Code and the New York State Environmental Quality Review Act (SEQRA- 6 NYCRR §617.5(c)(26)) and exempt from environmental review, and with respect to Attachment A to such Rules & Regulations exempt pursuant to 6 NYCRR 617.5(c)(24) & (27); now, therefore, be it

RESOLVED, that the Town Board hereby adopts the proposed Rules & Regulations as attached, to be effective as of 9 a.m. May 19, 2022; and be it further

RESOLVED, that the Rules and Regulations shall be posted on the Town's website, and made available in the Airport Manager's office upon request.

DATED: May 5, 2022

BY ORDER OF THE TOWN BOARD
TOWN OF EAST HAMPTON, NEW YORK

CAROLE A. BRENNAN
TOWN CLERK

Exhibit 36

Rules and Regulations for East Hampton Town Airport

Town of East Hampton
173 Daniels Hole Road
Wainscott, NY 11975
(631) 537 – 1130

Effective Date: May 19, 2022

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

Revisions

[illegible]

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

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RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

1. General

A. Introduction

The Town of East Hampton (“Town”) is the proprietor, operator, and sponsor of the private use East Hampton Town Airport (“Town Airport”). The Town Airport is managed by an Airport Director who reports to the elected officials who make up the East Hampton Town Board (“Town Board”). The Town Board has instituted a prior permission required (“PPR”) framework at the Town Airport, which is to be enforced by the Airport Director. Under the PPR framework, all operators must receive prior permission to use the Town Airport prior to an operation occurring. Failure to obtain permission to operate at the Town Airport can result in penalties as set forth in Town Code Chapter 75, including temporary or permanent rescission of permission in the future.

These Rules and Regulations and the Attachments thereto (“Rules”), and any amendments thereto, are promulgated pursuant to a Town Resolution and Chapter 75 of the Town Code. These Rules are intended to maintain a safe, quiet, and environmentally friendly Town Airport. The Town is proud of its resort-style community and peaceful way of life. The Town Airport must be operated consistent with—not in tension with—these values and qualities inherent in the Town. The Rules apply to all operations, activities, and conduct that occurs at the Town Airport; that said, military, public, and emergency aircraft operations are always permitted to use the Town Airport notwithstanding any contrary aspect of the PPR framework set forth in Attachment A. The Airport Director will enforce these Rules in coordination with the Town Board, Town law enforcement, and Town emergency response Personnel.

B. Amendments To Rules

The Town reserves the right to review, modify or change any or all of these Rules at any time. All Persons are subject to modified or changed Rules, regardless of whether and when the Person may have entered into an agreement with the Town. Upon amendment, the prior version of the Rules are without legal effect and the new version of the Rules applies to all Town Airport users with immediate effect. Use of the Town Airport is consent to and acceptance of these Rules and constitutes acknowledgement that the Rules govern the Person’s use of the Town Airport.

C. Compliance With Rules Required

All aircraft operations and vehicle operations at the Town Airport shall be conducted in accordance with these Rules and any subsequent amendments to the Rules.

D. Airport Director Additional Operating Procedures

The Airport Director may establish additional operational procedures which shall be considered as addenda to these Rules. To the extent this occurs, the Airport Director’s rules will be published as “Attachment C” to these Rules. Additional operational procedures published in Attachment C have the same effect as these Rules and the same penalties accompany any violations of the Airport Director’s additional operational procedures. To the extent the Airport Director’s rules conflict with these Rules, these Rules govern.

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

E. Severability Clause

If one or more provisions of these Rules are held to be unlawful, it shall not in any way affect any other clauses, sections, or provisions of these Rules.

F. Inconsistency with Town Code

If one or more provisions of these Rules are inconsistent with the Town Code, the Town Code section prevails.

G. Temporary Variance Permitted

The Town Board, in its sole discretion, may approve a temporary variance from specific provisions of the Rules when the enforcement of a provision would cause undue hardship or when facing unique circumstances. Any temporary variance shall not constitute a waiver or modification of any of the provisions herein for any purpose except as to the particular Person or operator and the particular provision that is the subject of the temporary variance and only for so long as the circumstances warranting the temporary variance exist.

In the event of an emergency which endangers the health, safety or welfare of an individual, individuals, or the community, the Airport Director may declare an urgent matter and temporarily waive any provision or provisions of the Rules. The Airport Director shall provide a report to the Town Board if this occurs.

H. Definitions

As used in these Rules, the following terms shall have the following meanings:

AIRCRAFT means any and all contrivances used now or in the future for the navigation of or flight in air or space, including but not limited to airplanes, airships, sail planes, gliders, helicopters, amphibians, eVTOLs, drones, UAS, etc.

AIRCRAFT EMERGENCY means a problem or condition involving an aircraft, whether in flight or on the ground, which could endanger lives or property. An aircraft emergency can be declared by the pilot, ATC, the Airport Director, or other Personnel responsible for the safe operation of the aircraft or Town Airport.

AIRCRAFT OWNER means the Person or entity listed as the registered owner on the FAA Certificate of Registration or the Person with exclusive control over the aircraft. If multiple Persons or entities are listed as the registered owner or share exclusive control, each are deemed to be an "Aircraft Owner."

AIRPORT DIRECTOR means the Person hired by the Town Board to manage and control the Town Airport. The Airport Director may designate specific staff to act on the Airport Director's behalf in promulgating and enforcing these Rules. In these Rules, "Airport Director" shall mean Airport Director or the Airport Director's specific designee(s).

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ATC OR AIR TRAFFIC CONTROL means Personnel, equipment, air traffic services, and FAA procedures provided or prescribed for use at the Town Airport, including those procedures for operation of aircraft at an uncontrolled airport.

BUSINESS OR COMMERCIAL ACTIVITY means the exchange, trading, buying, hiring or selling of commodities, goods, services or property of any kind, or any revenue producing activity at the Town Airport.

COMMERCIAL OPERATION means an operation being flown by a professional pilot(s) pursuant to 14 C.F.R. § 121; 14 C.F.R. § 125; and/or 14 C.F.R. § 135. For purposes of these Rules, Commercial Operations include Fractional Owned Operations.

EXCLUSIVE CONTROL means the legal authority to control, command, manage and supervise an aircraft; and, the sole power to determine the function and location of that aircraft. It does not include temporary custody by charter or for taxiing, parking, fueling, maintenance, storage or service.

FAA means the Federal Aviation Administration.

FRACTIONAL OWNED OPERATION means an operation being flown by a professional pilot(s) pursuant to 14 C.F.R. § 91k.

LICENSEE means any Person using the Town Airport, including all operators who conduct an operation at the Town Airport. See also Permission.

NOISY AIRCRAFT is an aircraft that has an aircraft noise signature that exceeds the limit set forth in Attachment A. Each aircraft's noise signature will be determined by reference to the most updated version of the FAA's Advisory Circular 36-1H. If an aircraft is not included in Advisory Circular 36-1H, it is deemed "noisy" unless the Airport Director provides a written acknowledgement stating otherwise.

NTSB means the National Transportation Safety Board

OPERATOR means any Person who pilots, controls, or maintains, whether directly or indirectly, an aircraft or vehicle.

OPERATION means a takeoff or a landing.

PERMISSION or PERMIT means permission granted by the Town Board or Airport Director unless otherwise herein specifically provided. See also Licensee.

PERSON means any individual, firm, partnership, corporation, association, company, or other legal entity (including any shareholder, member, officer, assignee, receiver, trustee, or similar representative thereof).

PILOT means the Person or Persons in command of an aircraft.

PRIOR PERMISSION REQUIRED or PPR means prior permission granted by the Town Board that is required to make operational use of a runway, taxiway, apron, or airport facility/service. The PPR rules in effect are set forth in Attachment A to these Rules.

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

RUN-UP means any operations of a stationary aircraft engine above idle power except to overcome inertia for taxiing for takeoff or for relocating an aircraft.

TOWN means the Town of East Hampton, New York.

TOWN AIRPORT means all of the land, improvements, facilities and development of the East Hampton Town Airport.

TOWN BOARD means the elected officials of the Town of East Hampton in which the legislative power of the Town is vested.

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

2. Use of Airport

I. General

A. Mandatory Adherence to Rules

All activity at the Town Airport must conform to these Rules, the Town Code, and any other applicable county, state or federal statute, rule, or regulation.

B. Use of Town Airport Constitutes Agreement To Follow Rules

Any use of the Town Airport shall be deemed to constitute an agreement by such Person to comply with these Rules.

C. Mandatory Self Reporting

Any violation of these Rules—including the PPR Rules set forth in Attachment A—whether accidental, justified, or otherwise, must be reported to the Airport Director within 48 hours of such violation. The report must include the name of the owner, name of the operator, name of the pilot, time, date, explanation of the events giving rise to the report, and an explanation of how the Person who committed the violation will ensure such violation will not occur again in the future. The Airport Director will take these details into account when determining whether and what penalty should be assessed. Timely and forthright reporting may lead to lesser penalties.

D. Denial of Access to Town Airport

The Town Board or Airport Director may deny any or all usage of or access to the Town Airport to any Person in their sole discretion. To the extent the determination was made by the Airport Director, such Person shall have the right to appeal the Airport Director's decision as set forth in the Town Code.

E. Conduct of Business or Commercial Activity

No Person shall engage in any business or commercial activity of any nature whatsoever at the Town Airport except with the prior written approval of the Town Board or Airport Director, and under such terms and conditions as may be prescribed in these Rules and in a lease or other agreement with the Town. To the extent applicable, compliance with the Town Code is independently required. A lessee or licensee has permission to engage in commercial activities at the Town Airport pursuant to the terms of such lease or license.

F. Airport Property

All use of property, buildings, or facilities at the Town Airport must be approved by the Town Board or Airport Director. A lessee or licensee has permission to use property, buildings, or facilities at the Town Airport pursuant to the terms of such lease or license.

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G. Commercial Photography

No Person shall take still, motion or sound recordings of or at the Town Airport for commercial purposes without having first obtained a permit pursuant to Chapter 138 of the Town Code.

H. Solicitation, Advertisement, Assembly and Demonstration

- i. No person shall solicit funds or peddle for any purpose at the Town Airport without the prior written permission of the Airport Director and without having first obtained the necessary permits and approvals pursuant to Chapter 151 and/or Chapter 198 of the Town Code.
- ii. No Person shall organize an assembly or demonstration at the Town Airport without prior permission of the Airport Director and without having first obtained the necessary permits and approvals in accordance with Chapter 151 of the Town Code, including prior notice to the Town Clerk. No assembly or demonstration may interfere with the safe and orderly operation of the Town Airport. The Airport Director shall direct the time, place and location where the assembly or demonstration may occur.

I. Signage

No Person shall post, distribute or display signs, advertisements, circulars or printed or written matter at a Town Airport without the written permission of the Airport Director and the approval of the Town's Architectural Review Board for signs requiring said Board's approval pursuant to Chapter 255 of the Town Code. The Town Board has the right to deny any proposed sign, advertisement, circular, or other signage.

J. Property Damage

No Person shall:

- i. Destroy, deface or disturb Town Airport property in any way.
- ii. Conduct activities that are injurious, detrimental or damaging to Town Airport property or to activities and businesses at the Town Airport.
- iii. Abandon any property at the Town Airport.
- iv. Engage in any conduct that interferes with remedial efforts undertaken to address damage to property.

K. Payment for Damages

Any Person causing, or liable for, any damage, shall be required to pay the Town, on demand, the full cost of repairs, clean up, removal, legal fees or other costs incurred by the Town as a result of the property damage. Any Person delaying or refusing to comply with this section shall be deemed to be in violation of these Rules and may be refused the use of all or part of the Town Airport.

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

L. Town Expressly Disclaims Liability For Damage At Town Airport

THE TOWN ASSUMES NO RESPONSIBILITY OR LIABILITY FOR LOSS, INJURY OR DAMAGE TO PERSONS OR PROPERTY ON THE TOWN AIRPORT, OR USING TOWN AIRPORT FACILITIES, BY REASON OF FIRE, VANDALISM, WINDS, FLOOD, EARTHQUAKE, ACT OF GOD, OR COLLISION DAMAGE, NOR DOES IT ASSUME ANY LIABILITY BY REASON OF INJURY TO PERSONS OR PROPERTY WHILE USING ANY TOWN AIRPORT FACILITY. NOTHING IN THE RULES SHALL CONSTITUTE A WAIVER OF THE TOWN'S SOVEREIGN IMMUNITY.

M. No Smoking Areas

No Person shall smoke in any hangar, shop or other building where it is dangerous to do so or where it is specifically prohibited by the Airport Director. Smoking includes, but is not limited to, the smoking and vaping of tobacco and cannabis. Smoking is prohibited inside the Town Airport terminals and Town owned and operated buildings and vehicles at all times. No smoking shall occur on any ramp or within fifty (50) feet of a fuel tank, fuel truck or aircraft.

N. Disorderly Conduct

- i. The Airport Director may revoke permission to access the Town Airport to any Person who engages in disruptive, unsafe, rude or other inappropriate behavior.
- ii. No Person shall commit any disorderly, obscene or unlawful act or commit any nuisance on the Town Airport.
- iii. No Person shall become intoxicated (e.g., using alcohol, narcotics, or habit-forming drugs) on any portion of the Town Airport, nor shall any intoxicated Person enter upon or loiter on or about the Town Airport or any of its facilities.
- iv. Whether conduct violates this section is determined in the sole discretion of the Airport Director.

O. Firearms, Explosives, Hazardous Materials, etc.

- i. No Person shall store, keep, handle, use, dispense or transport any hazardous materials at the Town Airport unless said act is done in accordance with the Rules, county law, state law, federal law, the New York State Uniform Fire Prevention and Building Code, the New York State Department of Environmental Conservation, the New York State Department of Transportation and the Suffolk County Department of Health Services, in particular Article 12 of the Suffolk County Sanitary Code. Hazardous materials shall include, without limitation, explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives, loaded firearms, radioactive materials and other materials described as "hazardous" by such federal, state and local laws, rules and regulations. Notification of any hazardous spill or emergency shall be made immediately to the East Hampton Fire Department and the Airport Director. Upon receiving notification, the Airport Director shall immediately notify the Town Fire Marshal and the Town Natural Resources Department. The Person who stores, keeps, handles, uses, dispenses or transports the hazardous material that spills or is the subject

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

of an emergency shall be responsible for the costs incurred in any corrective action. Said corrective action shall be in accordance with all applicable federal, state and local laws, rules and regulations.

- ii. All hazardous material, including petroleum products, must be stored in approved, environmentally safe, containers and cabinets.
- iii. Operators of hangars or other aircraft service or maintenance buildings, terminal buildings or other areas shall have suitable metal receptacles with self-closing covers for the storage of oil waste and rags, which must be removed by the operators from the Town Airport premises on a monthly basis or as otherwise established by the Airport Director. All oil waste and rags must be disposed of in accordance with county, state, and federal guidelines regarding disposal of such hazardous materials.

P. Model Aircraft, Tethered Aircraft, Banner Towing, Ultralight Aircraft, and Parachute Activities

- i. The flying or operating of model aircraft, drones, or other unmanned aerial vehicles within the Town Airport area is prohibited unless authorized in writing by the Airport Director.
- ii. No Person shall operate or release any kite, balloon, or parachute anywhere on or in the vicinity of the Town Airport without the written permission of the Airport Director.
- iii. No tethered aircraft operations are permitted at the Town Airport unless authorized in writing by the Airport Director.
- iv. No ultralight vehicle operations are permitted at the Town Airport unless authorized in writing by the Airport Director.
- v. No banner-towing operations are permitted at the Town Airport unless authorized in writing by the Airport Director.

Q. Fueling

- i. No aircraft shall be fueled or de-fueled while one or more of the engines are running or being heated, except in an emergency that threatens the health, welfare or safety of the public and with the prior approval from the Airport Director.
- ii. No aircraft shall be fueled or de-fueled while one or more passengers remain in such aircraft, except in an emergency that threatens the health, welfare or safety of the public and with the prior approval from the Airport Director.
- iii. Prior to and during all fuel handling operations, the aircraft and the fuel-dispensing or fuel-draining apparatus shall be grounded by wire to prevent the possibility of static ignition of volatile liquids.

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- iv. All fueling operations, devices, or handling shall be in accordance with and compliant with these Rules. This includes self-service fueling, bulk fueling, and truck-to-truck fueling.
- v. Each fixed based operator who has a contractual right pursuant to an agreement with the Town to sell or supply aviation gasoline or jet fuel and lubricating oils at a Town Airport, and each operator that has executed an agreement with the Town and has a right to fuel itself pursuant to the Rules and Regulations, shall solely use the Town-owned fuel storage facility. If, and for any period during which, said facility is not available, said fixed based operator or operator may make other arrangements subject to the approval of the Airport Director and the Town Fire Marshal.
- vi. No fuel service vehicle shall be used for transportation of aviation fuel, jet fuel or any other flammable liquids within the Town Airport boundary unless said vehicle is approved by the Airport Director and the Town Fire Marshal. Any spillage of fuel must be immediately reported as described *infra*.
- vii. The transfer of bulk fuel from one fuel service vehicle to another is prohibited within the boundaries of a Town Airport.
- viii. Aircraft fueling at a Town Airport shall not be conducted in any hangar or other building.

R. Animals

All animals present in the common areas of the Town Airport shall be controlled and restrained by a leash, harness, restraining strap, portable kennel, or other appropriate device. It shall be the responsibility of the owner or handler to exercise control over the animal at all times. Owners or handlers are responsible for the immediate removal and disposal of animal waste.

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

II. Vehicles and Pedestrians

A. General Requirements

- i. Vehicles will be operated at the Town Airport in accordance with these Rules, and all federal, state, and local laws.
- ii. All vehicles shall yield the right of way to aircraft in motion and emergency vehicles.
- iii. All Persons, upon entering or exiting a Town Airport access gate, shall make sure that the gate completely closes behind them before proceeding to their destination so as to not allow the entry of an unauthorized Person.

B. Control of Vehicles

- i. No Person shall operate or park a vehicle at the Town Airport in a manner prohibited by signs, pavement markings, or other signs posted by the Town. The Airport Director has the authority to regulate or prohibit access to any class or type of vehicle or other form of transport in its discretion.
- ii. Vehicles shall be operated in strict compliance with all posted speed limits at the Town Airport. The maximum speed limit for all vehicles, with the exception of authorized emergency services vehicles in the performance of their official duties, is fifteen (15) miles per hour on the ramp or secure areas. Vehicles within 50 feet of any aircraft are limited to a maximum of five (5) miles per hour.
- iii. No vehicle shall be operated on the runways, taxiways, and associated safety areas unless so authorized by the Airport Director.
 - a. Taxiing aircraft shall have the right-of-way over all ground vehicles.
 - b. Any vehicle authorized to operate on the Town Airport runways, taxiways, or associated safety areas shall display appropriate lighting or a flag that complies with FAA Advisory Circular 150/5210-5 and is visible to Town Airport Personnel.
 - c. All vehicles authorized to operate on the runways, taxiways, or associated safety areas must be equipped with a two-way radio, receive a clearance from, and remain in continuous communications with Town Airport Personnel. The installation of a two-way radio does not permit the unauthorized operation of vehicles on runways and/or taxiways.
 - d. Exceptions to this rule must be authorized by the Airport Director.

C. Airport Vehicle and Pedestrian Access Control

Persons leasing, operating or otherwise responsible for Town Airport property which contains any portion of the Town Airport security perimeter (as defined by the Airport Director), shall operate and maintain all vehicular and pedestrian access points and Town Airport security perimeter on their

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

property in a manner acceptable to the Airport Director, which limits access from their property to the Town Airport to only those Persons authorized by the Airport Director.

D. Authority to Remove Vehicles

The Airport Director may cause to be removed from any area of the Town Airport any vehicle which is disabled, abandoned, has an expired license tag, is parked in violation of these Rules, is parked in violation of New York State, Suffolk County, or Town laws, or which presents an operational hazard as determined by the Airport Director to any area of the Town Airport, at the vehicle operator's expense and without liability for damage which may result in the course of such movement.

E. Motor Homes, Boats, Trailers and Recreational Vehicles

Motor homes, boats, trailers, recreational vehicles, and other non-aviation related vehicles or equipment shall not be stored at the Town Airport without the prior written authorization of the Airport Director.

F. Accidents

The driver of any vehicle involved in an accident at the Town Airport shall immediately stop such vehicle at the scene of the accident, render reasonable assistance to a Person injured in the accident (if applicable), and make a report of such accident in accordance with state law and provide a copy of same to the Airport Director.

G. Careless Operation, Driving While Intoxicated

No vehicle of any kind shall be operated at the Town Airport:

- i. In a careless, negligent or reckless manner, or in disregard of the rights and safety of others, or while the driver would be prohibited by law from operating an automobile upon public streets due to drug or alcohol impairment or influence, or at a speed or in a manner which endangers or is likely to endanger Persons or property.
- ii. If the vehicle is constructed, equipped or loaded as to endanger or be likely to endanger Persons or property, or to result in the load or other materials becoming separated from the vehicle; or
- iii. Without operating headlights, tail lights, turn signals, and brake lights during hours of darkness, inclement weather, or reduced visibility.

H. Vehicle Parking Restrictions

- i. No Person shall park or leave any vehicle standing, whether occupied or not, except within a designated parking area or in the storage space designated for their aircraft while their aircraft is in use.
- ii. If in a public area, the vehicle shall be parked in a manner that allows the vehicle to be immediately driven or towed away in the case of an emergency.

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

I. Pedestrians Must Use Caution

No Person shall walk, stand, or loiter at the Town Airport if such activity is determined to be an operational or safety concern as determined by the Airport Director. Pedestrians must use caution to not endanger themselves or others at the Town Airport.

J. Vehicle Repair

- i. No Person shall clean or make any repairs to vehicles anywhere on the Town Airport except those minor repairs necessary to remove such vehicles from the Town Airport.
- ii. No Person shall move, interfere or tamper with any vehicle, or take or use any vehicle part or tool thereof, without the written permission of the owner or satisfactory evidence of the right to do so duly presented to the Airport Director.

III. Aircraft and Aircraft Operations

A. Town Airport's PPR Rules Govern All Operations

Use of the Town Airport is governed by the Town's PPR framework. No operation may occur at the Town Airport unless such operation is permitted by the Town's PPR framework set forth in Attachment A. If an operator is unsure whether its operation is permitted by the PPR framework in effect at that time, the operator should contact the Airport Director at least two (2) business days prior to the operation in question. This includes, but is not limited to, determining whether an aircraft is deemed Noisy if the Aircraft Noise Data is not included in the most updated version of the FAA's Advisory Circular 36-1H.

B. Authority to Prohibit Operations

- i. Notwithstanding any permissions granted in the PPR framework set forth in Attachment A, the Airport Director shall have the right at any time:
 - a. To temporarily close the Town Airport or any portion thereof to air traffic.
 - b. To temporarily prohibit aircraft landing and/or taking off at any time and under any circumstances (except emergency landings).
 - c. To temporarily delay or restrict any flight or other aircraft operations (except emergency landings).
 - d. To temporarily deny the use of the Town Airport to any Person or group when the Airport Director considers such actions to be necessary and desirable in the interest of safety or when the Rules are being violated.
- ii. Under no circumstances shall an authorized Town Airport closure or restriction constitute grounds for reimbursement of any alleged or actual expense, loss of revenue, or damage incurred by any operator, tenant, permittee, or any other entity.
- iii. Any operator who willfully performs unsafe, low, or noise-provoking maneuvers may forfeit its right to operate out of or otherwise use the Town Airport. The Airport Director has sole discretion when determining whether an operation is unsafe, low, or noise-provoking for purposes of this section.

C. Emergency, Public, and Military Operations

- i. Notwithstanding any permission granted in the PPR framework set forth in Attachment A, emergency, public, and military operations may occur at any time and are not prohibited by the Town.
- ii. If an emergency operation occurs, the operator must provide a written report to the Airport Director, FAA, and if applicable the NTSB, within 24 hours. Beyond the requirements set forth in federal regulation, the report must include the name of the aircraft owner, name of the aircraft operator, name of the pilot, time, date, and an explanation of the events giving rise to the report.

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

- iii. If the Airport Director requests additional information regarding the emergency operation, the owner, operator, and pilot, as applicable, must furnish such information in a timely manner. Failure to provide such information constitutes a violation of these Rules.
- iv. If the Airport Director determines, in its sole discretion, that the declaration of an emergency was not warranted, the Airport Director may consider the operation a violation of these Rules and assess penalties.

D. Aircraft and Operational Requirements

- i. All aircraft must be deemed airworthy by the FAA and in compliance with all federal laws and regulations to operate at the Town Airport.
- ii. No aircraft shall be operated at the Town Airport in a careless or negligent manner, or without regard for the rights and safety of others, or at a speed that is likely to endanger others, or by an operator who is under the influence of alcoholic beverages or any narcotic or habit-forming drug. Extreme caution and vigilance shall be maintained by the operator at all times.
- iii. No aircraft shall operate at the Town Airport unless it is equipped with brakes and a functional radio capable of direct two-way communications with Town Airport Personnel, except with prior consent of the Airport Director.
- iv. No rotorcraft equipped with skid-type landing gear shall perform run-on landings or any other maneuver that would cause the skids to slide upon the runway surface.
- v. Rotorcraft shall not be taxied, towed, or otherwise moved with the rotors turning unless prior approval is obtained from the Airport Director. Upon receipt of prior approval from the Airport Director, rotorcraft shall not taxi diagonally across the ramp and instead must use taxi lanes and taxi ways.
- vi. Rotorcraft must land and takeoff from designated areas or as directed by the Airport Director.
- vii. Aircraft awaiting takeoff shall hold at the marked holding line until the runway in use is clear. If no holding line exists, aircraft shall stop at least 100 feet (unless usable area does not permit) from the runway in use.
- viii. No Person other than a pilot or mechanic certified by the FAA shall taxi an aircraft on any part of the Town Airport
- ix. All aircraft shall be taxied at less than 15 miles per hour and in a manner with due regard for other aircraft, Persons, and property. The pilot or mechanic certified by the FAA in control of the aircraft may not taxi until confirming that such operation does not pose a risk to Persons or property.
- x. No aircraft shall be taxied off hard-surface runways or hard-surface taxiways unless to clear the runway for another aircraft that has declared an emergency.

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

E. Running of Aircraft Engines

- i. Aircraft engines shall only be run at idle except as may be necessary for safe taxiing operations, taking off, landing, preflight testing, and maintenance testing. All engine run-ups shall be conducted in the appropriate run-up areas as determined by the Airport Director and in accordance with noise abatement procedures.
- ii. No Person shall start or run any engine in an aircraft unless a licensed pilot or qualified mechanic certified by the FAA is in the aircraft attending the engine controls. Chocks shall always be placed in front of the wheels before starting the engine(s) unless the aircraft is equipped with adequate brakes.
- iii. No aircraft engine shall be started or aircraft taxied where the exhaust or propeller blast may cause injury to Persons or do damage to property or spread debris at the Town Airport. If it is impossible to taxi such aircraft in compliance with this section, then the engine(s) must be shut off and the aircraft towed.
- iv. Aircraft can only be fueled at locations designated for such purpose as approved by the Airport Director.
- v. Aircraft engines or rotors cannot be operated for longer than 10 minutes while the aircraft is located on the ramp.
- vi. Auxiliary power units (“APU”) cannot be operated for longer than 30 minutes.
- vii. No aircraft engine shall be started or run while such aircraft is in a hangar or enclosed space.

F. Landing Fees

Landing fees are to be set and amended, from time to time, by resolution of the Town Board. The landing fees schedule is provided as Attachment B to these Rules and are posted on the Town website. Such landing fees shall be filed in the office of the Town Clerk prior to their effective date and shall be publicly noticed by the Airport Director or other responsible official.

G. Shutoff Engines For Passenger And Cargo Loading and Unloading

Aircraft engines must be shutoff while cargo and/or passengers are loaded or unloaded. All loading and unloading must occur in areas designated by the Airport Director.

H. Registration

All based aircraft must be registered with the Airport Director. All information regarding changes to owner, operator, FAA registration number, or other aspect of the aircraft must be provided to the Airport Director within 15 days of such change occurring.

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

I. Self-Service Requires Prior Approval

A Person desiring to perform services (fueling, maintenance, repair, or cleaning) on that Person's aircraft utilizing that Person's vehicles, equipment, and resources (self-service) must obtain prior approval from the Airport Director.

J. Cleaning and Maintaining Aircraft

Cleaning, washing, polishing, or otherwise maintaining aircraft shall be accomplished only in areas designated for that purpose by the Airport Director.

K. Aircraft Parking Restrictions

- i. All aircraft must be parked in an area designated for such purpose. The Airport Director has the right to designate parking areas and the locations for the parking of aircraft, fuel trucks or other ramp vehicles.
- ii. Aircraft shall be parked or stored so as not to obstruct any movement area, aircraft parking and storage area, or taxi lane, or another aircraft's ingress or egress from the Town Airport's movement area.
- iii. Aircraft shall be parked in a manner that allows the aircraft to be immediately pushed or towed away in the event of an emergency. The aircraft owner is responsible for the security of the tie-down restraints.
- iv. Upon direction of the Airport Director, the operator of any aircraft parked or stored at any area shall move said aircraft from the place where it is parked or stored to any other designated place that can reasonably accommodate the aircraft and does not create a hazard or safety issue; if the operator refuses to comply with such direction, the Airport Director may tow said aircraft to such designated place at the operator's expense, and without liability for damage which may result in the course of such moving. The operator or owner is responsible for any damage done by or to the aircraft.

L. Disabled, Damaged or Dismantled Aircraft

- i. Storage of disabled, damaged or dismantled aircraft or aircraft that appear to be un-airworthy, in areas other than inside a privately owned hangar, for more than thirty (30) calendar days after written notification from the Airport Director is prohibited, unless pre-approved, in writing, by the Airport Director for a specific time period and in an enclosed storage area.
- ii. If an aircraft described above in A is not removed within the prescribed thirty (30) days, the Airport Director may cause the aircraft, at the owner's/operator's expense, to be removed from the Town Airport.
- iii. Abandoning an aircraft anywhere on the Town Airport is prohibited.

RULES AND REGULATIONS – EAST HAMPTON TOWN AIRPORT (JPX)

M. Accident or Incidents

- i. Any damage to an aircraft in motion, any damage or injury to Persons or property caused by an aircraft, or any damage to an aircraft caused by Persons or property, is considered by Town to be a reportable accident or incident, regardless of FAA or NTSB criteria.
- ii. Aircraft operators involved in an incident or accident at the Town Airport resulting in injury or death to Person(s) or damage to property shall make a full and prompt report of the incident to the Town Board and Airport Director, complete any necessary reports or forms, and comply with all applicable provisions of NTSB Regulations. Damage to property includes damage to a runway, taxiway, taxilane, apron, signage, or navigational aid, light or fixture.
- iii. Upon authorization to remove the aircraft, the operator shall be responsible for the safe and prompt removal of the aircraft and any parts of an aircraft within a movement area to a non-movement area.
- iv. If immediate arrangements are not made (so that the Town Airport can return to full operational status without unreasonable delay), the Town may have the aircraft removed at the aircraft operator's risk and expense without liability for damage arising from or out of such removal.

N. Authority to Remove Aircraft

The Airport Director may move any aircraft, at the operator's risk and expense without liability for damage arising from or out of such action, which is disabled, abandoned, parked in violation of these Rules, or which presents an operational hazard. Aircraft may also be moved in the interests of security or Town Airport maintenance.

O. Removal of Fuel, Oil, and Grease

Any Person involved in the spillage or dripping of fuel, oil, grease, or any material which may be unsightly, detrimental, or hazardous in any area of the Town Airport has the responsibility for the immediate cleanup and proper removal of the material and for the notification of this incident to the Airport Director immediately. The responsibility for the immediate removal of such fuel, oil, grease or other material shall be assumed by the operator or owner of the equipment causing the same or by the tenant or Person responsible for the deposit. In the event of such spillage, and failure of the operator or owner to restore the area to its original safe and environmentally sound status, the Town may cleanup any material unlawfully spilled, placed or otherwise deposited at the Town Airport and may charge the responsible Person(s) for the cost of the cleanup, and any required environmental remediation, and any expenses incurred by, or fines or damages imposed on, the Town as a result thereof. All cleanup must be completed in accordance with local, state, and federal law and guidelines.

P. Spilled Gasoline

No Person shall start the aircraft heater(s) or the engine(s) of any aircraft or other vehicle within 50 feet of spilled aviation gasoline, jet fuel, diesel or other flammable or combustible liquid material. The owner or operator of any aircraft or the owner or operator of any motor vehicle which has spilled fuel,

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or the owner of any building or the lessee of any building in which a spill has occurred, shall immediately notify the East Hampton Fire Department and the Airport Director. Upon receiving notification, the Airport Director shall immediately notify the Town Fire Marshal and the Town Natural Resources Department. All cleanup must be completed in accordance with local, state, and federal law and guidelines.

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IV. Tenant Operations

A. Hangars

Hangars shall be used for the purposes of storing an aircraft or other aeronautical equipment. Failure to utilize a hangar for such purpose can lead to the loss of use of the hangar or other penalties under applicable law.

B. Compressed Gases

Oxygen or any compressed gas in a cylinder or portable tank must be secured to a fixed location or secured to a portable cart designed and approved specifically for the cylinders or tanks being secured.

C. Fire Prevention

Tenants shall be responsible for ensuring that fire safety and building practices and procedures are followed at all time.

D. Storage of Materials and Equipment

Railroad (box or tanker) cars, intermodal containers, or tanker, truck, or flatbed trailers, etc. shall not be stored or used to store any type of materials, vehicles, or equipment, unless approved, in writing, by the Airport Director.

E. Telecommunications

Persons and tenants shall operate any and all of its communications equipment (wired or wireless) in a manner that will not cause interference to operations of the Town Airport. Upon any notification from the Town, the Airport Director, the FAA or the police or fire departments of any interference caused by an operator's or tenant's operations, the operator or tenant shall cease all communications operations, transmissions and uses of the Town Airport. The Person or tenant may not resume communications operations until the Town has so notified the tenant in writing.

F. Right to Inspect

The Airport Director shall have the right at all reasonable times to inspect all areas under lease to or occupied by tenants.

G. Enforcement of Rules and Regulations

1. Penalties and Process

Chapter 75 of the Town Code contains the applicable penalties and enforcement process for all violations of these Rules. To the extent a conflict exists between the Town Code and these Rules, the Town Code provision governs.

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2. Airport Director Maintains Safe and Orderly Operations at Town Airport

The Airport Director is hereby charged with the responsibility of maintaining the safe and orderly operation of the Town Airport and prohibiting activities at the airport which endanger the health, safety, welfare or property of any member of the public or any user of the Town Airport.

3. Airport Users Bound by Rules and Town Code:

- i. The Town, as operator of the Town Airport, provides that these Rules will be enforced as if part of the Town Code.
- ii. Use of the Town Airport constitutes a revocable permit and/or license to utilize the facilities and the express consent by the aircraft owner, operator, and pilot to the jurisdiction of the East Hampton Town Justice Court and/or the Suffolk County Supreme Court for adjudication of any violations of the Town Code or these Rules, or enforcement of any applicable Town, County, State or Federal Laws and Rules, and enforcement of any directives of the Airport Director.
- iii. Notwithstanding the foregoing provisions of this Section, the Licensee expressly consents to the actions of the Airport Director as set forth herein deemed necessary to maintain safety at the Town Airport.

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Attachment A – Town Airport PPR Framework (effective May 19, 2022)

1. Time-Based Permission

- A. Aircraft are not permitted to operate at the Town Airport except during these times:
 - i. Monday – Thursday: 08:00 – 20:00 (all times local)
 - ii. Friday – Sunday and Federal Holidays: 09:00 – 19:00 (all times local)

2. Operator-Based Permission

- A. Each aircraft operated by a Commercial Operator (14 C.F.R. Part 135) or Fractional Owned Operator (14 C.F.R. Part 91k) is permitted to operate at most one roundtrip per day.
- B. A roundtrip is one takeoff and one landing.
- C. This will be enforced on a registration number basis (e.g., more than one roundtrip by a particular aircraft is not permitted under these Rules).

3. Noise-Based Permission

- A. Aircraft with a noise signature of 91.0 EPNdB or higher (“noisy” operations) are permitted to operate at most one roundtrip per day.
 - i. The noise signature is defined by the FAA in Advisory Circular AC-36-1H.
 - ii. Subject to (iii) set forth immediately below, if an aircraft is not listed on AC-36-1H, it is presumed to be noisy unless prior written approval is received from the Airport Director finding the aircraft to be “not noisy.”
 - iii. Fixed wing, piston driven aircraft are presumed to be not noisy.
- B. This will be enforced on a registration number basis (e.g., more than one roundtrip by a particular aircraft is not permitted under these Rules).
- C. If an aircraft is both “noisy” and conducting a commercial or fractional owned operation, that aircraft is permitted to operate at most one roundtrip per day.

4. Size-Based Permission

- A. Aircraft that have a maximum takeoff weight that is 50,000 lbs or heavier do not have permission to operate at the Town Airport.

5. Airport Director Permission

- A. The following activities may only be conducted at the Town Airport with prior written permission of the Airport Director. The Airport Director’s permission may be provided on an per-operator basis or as set forth in Attachment C to the Rules and Regulations.
 - i. Ultralight vehicle or other Part 103 operations;
 - ii. Banner towing;
 - iii. Skydiving;
 - iv. Operation of Stage 1 or Stage 2 jets; and
 - v. Touch-and-go operations.

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Attachment B – Town Airport Landing Fees (effective as of May 19, 2022)

All aircraft operations will be required to pay the appropriate fee for each landing conducted at the Town Airport. Local based operators are **not** exempt from such fees.

Fixed Wing

Aircraft Weight	Fee
Below 5,500	\$20
5,500 – 7,499	\$300
7,500 – 9,999	\$450
10,000 – 12,499	\$600
12,500 – 24,999	\$800
25,000 – 39,999	\$1,250
40,000+	\$1,750

Rotorcraft

Aircraft Weight	Fee
Below 4,000	\$300
4,000 – 7,499	\$400
7,500 – 12,499	\$500
12,500+	\$750

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Attachment C – Airport Director Policies and Procedures